Union Calendar No. 1043

87th Congress, 2d Session - - - - - House Report No. 2492

# INVESTIGATION AND STUDY OF THE FEDERAL HOME LOAN BANK BOARD

Clovis, N. Mex.

Union Calendar No. 1043

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## TWENTY-EIGHTH REPORT

BY THE

## COMMITTEE ON GOVERNMENT OPERATIONS

SEPTEMBER 26, 1962.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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## LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
*Washington, D.C., September 28, 1962.*

Hon. JOHN W. MCCORMACK,
*Speaker of the House of Representatives,*
*Washington, D.C.*

DEAR MR. SPEAKER: By direction of the Committee on Government Operations, I submit herewith the committee's twenty-eighth report to the 87th Congress. The committee's report is based on a study made by its Special Federal Home Loan Bank Board Subcommittee.

WILLIAM L. DAWSON, *Chairman.*

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Clovis, N. Mex.

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SEPTEMBER 27, 1962.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. DAWSON, from the Committee on Government Operations, submitted the following

## TWENTY-EIGHTH REPORT

### BASED ON A STUDY BY THE SPECIAL FEDERAL HOME LOAN BANK BOARD SUBCOMMITTEE

On September 24, 1962, the Committee on Government Operations had before it for consideration a report entitled "Investigation and Study of the Federal Home Loan Bank Board, Part 2—Clovis, N. Mex." Upon motion made and seconded, the report was approved and adopted as the report of the full committee. The chairman was directed to transmit a copy to the Speaker of the House.

### INTRODUCTION

This is an interim report by the Special Subcommittee on the Home Loan Bank Board. This subcommittee was established during the 86th Congress by the Honorable William L. Dawson, chairman, House Committee on Government Operations to investigate the facts and circumstances surrounding the seizure by the Federal Home Loan Bank Board of a federally chartered savings and loan association. In June 1961 (87th Congress) Chairman Dawson directed the subcommittee to broaden the scope of its inquiry so as to undertake a "comprehensive" investigation of the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the Federal home loan banks. The subcommittee was further directed to study not only the organization, practices, and procedures of the Bank Board, but the Bank Board's relationship to other Federal departments and agencies. This report results from the subcom-

mittee inquiry into the activities of the Bank Board as affecting a federally chartered savings and loan association, namely, the First Federal Savings & Loan Association of Clovis, Clovis, N. Mex.

## List of Witnesses

The following witnesses were heard in public sessions, commencing March 15, 1962:

Congressional:

Hon. Joseph M. Montoya, a Representative in Congress from the State of New Mexico.

Hon. Thomas G. Morris, a Representative in Congress from the State of New Mexico.

Federal Home Loan Bank Board:

Albert V. Ammann, Associate Director, Division of Supervision.

Harold H. Chastain, chief examiner, ninth district.

Thomas H. Creighton, Jr., General Counsel.

Norvey B. Greenwood, Assistant Director, Underwriting Division, Federal Savings and Loan Insurance Corporation.

William H. Husband, General Manager, Federal Savings and Loan Insurance Corporation.

Ennis M. Oakes, supervisory agent, ninth district, and president, Federal Home Loan Bank of Little Rock, Little Rock, Ark.

Paul Pfeiffer, Jr., Assistant General Manager, Federal Savings and Loan Insurance Corporation.

Lawrence M. Walters, Director, Division of Examinations.

John M. Wyman, Director, Division of Supervision.

Other:

Floyd Bresenham, former officer, First Federal Savings & Loan Association of Clovis, Clovis, N. Mex.

C. Roy Smith, former director and officer, First Federal Savings & Loan Association of Clovis, Clovis, N. Mex.

Jack M. Stagner, general contractor, Grants, N. Mex.

Hearings were held on March 15, 16, 19, 20, 21, 22, 23, and 26, 1962. Five of the eight days' hearings included both morning and afternoon sessions. The hearings have been printed in one part, totaling 653 pages, and includes some 52 exhibits.

## General Commentary

Firm, consistent, and effective regulations are required to safeguard investors and stockholders in savings and loan associations chartered or insured pursuant to Federal statutes. "Unsafe or unsound" practices must not be tolerated.

The Federal Home Loan Bank Board, however, has not issued definitive guidelines for the associations. Instead, the Bank Board has allowed the Director of its Division of Supervision, Mr. John M. Wyman, to make his own determinations in each case as to what constitutes unsafe or unsound operations and it has permitted him to interfere improperly in the management of the associations.

The testimony of Federal Home Loan Bank Board witnesses shows that in arriving at such determinations (made without hearings and frequently without consulting legal counsel), Mr. Wyman relies at his discretion on unverified information gathered from various sources—including incomplete investigative reports, unproved charges, incomplete records of closed transactions, reported conversations, etc. It was upon such unverified and incomplete information that drastic, unauthorized ex post facto supervisory action was taken in the case of the First Federal Savings & Loan Association of Clovis, Clovis, N. Mex. Clearly this method of operation by a regulatory agency of the U.S. Government is repugnant to Anglo-American principles of due process of law which are safeguarded by the fifth amendment and other provisions of the Constitution of the United States.

In this case the asserted grounds for the supervisory action was "self-dealing" which was said to constitute a violation by certain officials of the association of "their duties as fiduciaries." No specific statute, regulation, court decision, administrative ruling or other law was cited as having been breached. Moreover, the association was admittedly in a sound financial condition—not only at the time the supervisory action was taken but throughout the previous 9-year period during which Mr. Wyman adjudged its operation was "unsafe or unsound" due to "self-dealing."

The so-called self-dealing situation which belatedly kindled the supervisory action grew out of the formation of a land-holding corporation, Stagner, Inc., organized December 21, 1951, for the primary purpose of developing lots for sale to builders. Four of the organizers and stockholders in Stagner, Inc., were Jack M. Stagner, head of Stagner & Sons, Inc., a family-owned construction corporation; C. Roy Smith, president and managing officer and director of the First Federal Savings & Loan Association of Clovis, Clovis, N. Mex.; Otto Smith (no relation to C. Roy), director and attorney for said association; and Floyd Bresenham, vice president of the association. The three officers of the association, the two Smiths and Bresenham, disposed of their stock in Stagner, Inc., May 25, 1956.

Stagner, Inc., never borrowed any money from the association, but approximately 90 percent of the lots it sold were sold to Stagner & Sons, Inc., the largest builder in the area. The latter corporation borrowed construction funds from the association—mostly for the construction of housing projects precommitted by the Federal Housing Administration or Veterans' Administration or both. Such construction loans were made by the association to Stagner & Sons, Inc., on the same basis and at the same interest rate as it made loans to other builders. The houses were sold at VA and FHA appraised values.

After prolonged reviews by Mr. Wyman's staff of examination and investigative reports made in 1956 and 1957, and of prior examination reports and correspondence files, etc., pertaining to the association's lending practices—particularly loans made in connection with the "Stagner Operations"—Mr. Wyman and Mr. Ennis M. Oakes, supervisory agent, ninth district, Federal Home Loan Bank Board, and president, Federal Home Loan Bank of Little Rock, eventually arranged for a meeting between themselves and the directors of the association at Little Rock, Ark., on May 21, 1959.

From the notice the directors of the association received of the proposed meeting, they concluded the "supervisory officials" wished to discuss with them "the many questionable practices set out in the report and supplemental report" of the examination and audit of the association "made as of the close of business September 3, 1957, by Examiner H. H. Chastain, representing the Federal Home Loan Bank Board." Accordingly, the directors prepared written "answers and explanations" to the practices criticized in said report which they took with them to Little Rock and "which" testified C. Roy Smith "we were never allowed to use."

Mr. Wyman opened the meeting by summarily serving upon the directors a supervisory letter—actually an administrative decision and mandate signed by himself and Supervisory Agent Oakes—which decreed in part that—

> It is imperative that conclusive steps now be taken to put an end to the unsafe or unsound operation of the association and to the self-dealing relationships and practices which are the cause and the dominant policy of that operation. Therefore, we must insist that the directors, at this meeting, give us a letter over their individual signatures committing themselves to take the following actions promptly upon their return to Clovis and in any event not later than May 31, 1959:
>
> 1. Adopt a resolution immediately abolishing the agency at Hereford, Tex. * * *
>
> 2. Adopt and confirm by appropriate resolutions the directors' action at this meeting establishing a committee of 5 directors and designating as members thereof persons who are unobjectionable to the undersigned, and directing such committee to prepare a program for the future management, policies, and operation of the association * * *.
>
> * * * * * * *
>
> This * * * program shall include the employment of a new managing officer vested with authority fully consonent with that position; and an increase in the number of directors

> from 7 to at least 11 and the election to the additional positions thus created of responsible citizens of the community, each of which persons, including the new managing officer, shall have been found acceptable by and to the Supervisory Agent prior to his appointment or election.

(This final paragraph was added to the letter as a footnote at the meeting for purposes of clarification.)

Fearing seizure of the association by the Federal Home Loan Bank Board the directors agreed to comply with the drastic mandatory provisions of the letter.

The arbitrary action taken at Little Rock, including the purported acceptance by the association officials present of the findings of facts contained in the supervisory letter, was to have additional drastic results. The intemperately worded letter (and passages in certain documents to which it referred) irreparably defamed Jack M. Stagner, C. Roy Smith, and Floyd Bresenham and ultimately resulted in the blacklisting of these three men from holding office in savings and loan associations chartered or insured pursuant to Federal statutes. Neither Bresenham nor Stagner was present at the meeting.

On the other hand, Otto Smith, the fourth participant in the so-called self-dealing arrangement (which was condemned retroactively at Little Rock) was not only allowed to continue as a director and attorney for the association but he was also authorized to act as the attorney for the Committee of 5 Directors, selected by Mr. Wyman before the meeting, to reorganize the association to eliminate conflict-of-interest situations therefrom—"self-dealing by directors, officers, employees, and others in a position of trust."

The prima facie meaning of a mandate such as Mr. Wyman delivered to the directors of the Clovis Association at Little Rock is "obey or your association will be seized." Short of seizure, there is no legal means by which the Bank Board can enforce such a mandate. Therefore, when the Bank Board witnesses testified that there were no grounds for seizure, they thereby admitted that in this case they resorted to the device of regulation by blackmail.

## Agency Investigations of First Federal Savings & Loan Association of Clovis, Clovis, N. Mex.

During the period beginning in April 1956 and ending in September 1959, Federal agencies made five investigations of the operations of the First Federal Savings & Loan Association of Clovis, Clovis, N. Mex,. and its managing officers without a dishonest transaction being uncovered. Moreover, throughout this period, the association was admittedly in a sound financial condition. Nevertheless, the Director of the Federal Home Loan Bank Board's Division of Supervision, Mr. Wyman, basing his conclusions primarily on the reports of three of the five investigations—one by the Veterans' Administration and two by the Federal Home Loan Bank Board examiners—proclaimed at Little Rock, May 21, 1959, that the managing officers of the association had been conducting its operations in an unsafe or unsound manner since 1950. The other two investigations, both by the Federal Bureau of Investigation, did not figure in Mr. Wyman's findings or in the drastic supervisory action he took at Little Rock. Nevertheless, as will appear later, they do have an important bearing on the evaluation of the overall case.

### I. VETERANS' ADMINISTRATION INVESTIGATION

Veterans' Administration's regional loan guaranty officer at Albuquerque, N. Mex., initiated the Veterans' Administration's investigation April 9, 1956, for the asserted purpose of ascertaining whether officials of the association were: (1) Using "reasonable prudence from a credit standpoint in making loans on properties constructed by Stagner;" and (2) whether any official of the association was "interested directly or indirectly in the Stagner Construction Co."

Builder Jack M. Stagner testified (hearings, pp. 69, 70) that Veterans' Administration's investigation of the association's suspected imprudent loans to veteran purchasers of Stagner constructed houses was but part and parcel of a politically inspired scheme to harass Stagner's building operations.

Other testimony as to the manner in which the investigation was conducted and the inconsistent actions taken by Veterans' Administration in connection therewith tend to indicate the investigation may not have been a completely forthright undertaking. Former President C. Roy Smith and former Vice President Floyd Bresenham, the top officials of the association at the time, testified (hearings, pp. 12, 13; 60–63) that they were not aware of the VA investigation. The association had received no complaints or notice that the VA was concerned about the association making loans to veterans having inadequate credit ratings. When the association received notice June 8, 1956, from the VA's Albuquerque office terminating the association's automatic guaranty privileges, officers of the association paid little attention to it since it had no practical effect on their operations. It merely meant the VA's Albuquerque office wanted to pass judg-

ment on the eligibility of borrowers before guaranteeing their repayment of such loans. Without changing its credit policies or procedure, the association went right on submitting veterans' applications for loans—including applications for loans on Stagner-built houses—to the VA's Albuquerque office, and that office, to Mr. Bresenham's best recollection, accepted all the applications and approved the loans without delay.

Nevertheless, it appears that Martin May, the VA's regional loan guaranty officer, was aggravated by the association's indifference to the termination of its automatic guaranty privileges. Bresenham testified (hearings, pp. 37, 61) that Mr. May telephoned him and said, "What do you mean sending these veterans' applications up here? Don't you know that you are being investigated by the FBI?" Bresenham told Mr. May that he was not aware of the investigation and he "felt that there was nothing wrong with our operation."

Bresenham testified further (hearings, p. 41) that the VA's regional office at Lubbock, Tex., which processed loans made by the association to veterans in Texas "never terminated automatic guarantee privileges." And that, "I am sure that the records of the association will show that there was no higher ratio of loan failures between loans made under automatic guarantee and those processed through the VA regional office" (hearings, p. 37). Mr. Bresenham also pointed out that Federal Housing Administration, which had inspected and approved all of the Stagner-built houses, "continued to inspect and approve the same type of house being built by Stagner at the time the VA was questioning the quality of construction."

From certain statements made in the VA investigative documents and statements made by the VA's regional office personnel to committee staff interviewers, it appears the VA's Albuquerque office anticipated proving: (1) That certain officers of the association were partners in Stagner & Sons Construction Co. (hearings, p. 560, exhibit No. 20, memorandum dated May 1, 1956, par. 4); and (2) that since the association was not charging permissible discounts on loans made to the "builder-seller" (hearings, p. 558; exhibit No. 20; memorandum dated Apr. 25, 1956, penultimate paragraph), the amount of such permissible discounts was being split among the suspected officers of the association and builder Stagner. When the VA's Albuquerque office failed to prove that its suspicions were true, its investigation fell to the ground. This is illustrated by the following summary of the statements made by the VA regional office personnel to committee staff which is referred to and discussed in detail in conjunction with the VA report at pages 432–447 of the hearings:

1. Although the VA Albuquerque office, during the course of its investigation, terminated the authority of the First Federal Savings & Loan Association of Clovis, N. Mex., to make loans on an automatic guaranty basis, the VA did not lose money on the criticized GI loans made by the association.

2. The VA was not able to prove that loans were made to builder Stagner or to purchasers of Stagner-built houses on a different basis than loans were made to other builders and purchasers.

3. The VA was not able to prove that any officer of the association had an interest in the Stagner Construction Co.

4. The U.S. attorney had declined prosecution of the *Crane* case—referred by the VA to the FBI because the VA suspected the association had illegally made the loan to Crane, "knowing" Crane had no

intention of ever making the house his home as required by law (see 38 U.S.C. 1804). The FBI investigation was closed only when Crane actually occupied the house and the VA had to acknowledge "the transaction was bona fide."

5. The investigation of First Federal of Clovis by the VA was the only case like this the regional office ever had.

The VA in its letter of March 19, 1962, to subcommittee Chairman Moss admits that in substance the above summary is correct (hearings, pp. 432, 433).

### II. SPECIAL EXAMINATION OF SEPTEMBER 10, 1956

The Veterans' Administration's Washington office furnished copies of the incomplete investigative report of its Albuquerque office to the Washington office of the Federal Home Loan Bank Board. Receipt of the report by the Bank Board prompted Mr. Wyman, its top supervisory officer, to write a five-page memorandum of special instructions dated August 21, 1956, to the Bank Board's Director of the Division of Examinations, Mr. Bonesteel. Said memorandum requested that a special examination be made at the earliest practicable date and stressed particularly the importance of gaining access to Stagner's records and of getting information from other sources and officials over and above that contained in the association's records which might show business relationships between Stagner and association officers (hearings, p. 92; exhibit No. 19).

The special examination was begun on September 10, 1956, with Assistant Chief Examiner H. H. Chastain of the ninth district in charge. According to the testimony of former Vice President Floyd Bresenham of the association, the examination was begun and conducted in a rather unusual and high-handed manner during the course of which Mr. Chastain expressly mentioned the possibility of seizure of the association (hearings, pp. 32, 33).

Mr. Chastain testified that "the procedures included in the scope of the September 1956 examination were designed to comply with the instructions and requests contained in the assignment letter of August 31, 1956, and Mr. Wyman's memorandum dated August 21, 1956, to Mr. Bonesteel." While Mr. Chastain denied he mentioned the possibility of seizure, he admitted that at the opening of the September 1956 examination, "I did request Mr. Bresenham and Mr. Martin to show me, item by item, all papers and documents on top of their desks and in desk drawers, but I did not instruct anyone to sit at their desks and keep their hands on top of the desk" (hearings, p. 89).

With further reference to the manner in which the examination was conducted, Mr. Stagner testified that Mr. Chastain "threatened" that if Stagner, Inc., records were not made available to him "he would get a court order in 5 minutes." The statement was made in the offices of the First Federal Savings & Loan Association in the presence of Floyd Bresenham (hearings, pp. 71, 77, 78). Mr. Chastain testified that he did not recall making such a statement and that he "did not have the authority to obtain a court order" (hearings, p. 91). Mr. Bresenham corroborated Mr. Stagner's testimony testifying, with respect to the alleged court order threat, that Mr. Chastain did state he "could get one within 5 minutes" (hearings, p. 205).

Mr. Chastain's special examination report showed (1) that President C. Roy Smith, Vice President Floyd Bresenham, and Otto Smith, director and attorney for the association, all had been stockholders in Stagner, Inc. (a landholding company), from the date of its incorporation, December 21, 1951, until May 25, 1956, when they disposed of their stock in said corporation; (2) that Stagner, Inc., never borrowed any money from the association; but (3) that Stagner, Inc., had sold many lots to Stagner & Sons (a family-owned construction corporation) which had borrowed construction funds from the association.

The special examination report failed to convince Ennis M. Oakes, supervisory agent of the Bank Board's ninth district, that there was anything substantially wrong in the operation of the association (hearings, pp. 130–133). On November 19, 1956, Mr. Oakes took the following actions:

(1) Wrote a supervisory letter to the board of directors of the association transmitting a copy of the special examination and audit. In said letter Mr. Oakes directed attention to "a very definite need for a careful review of all lending and collection policies" (hearings, p. 588, exhibit No. 35).

(2) Wrote a letter to the Director, Division of Supervision, John M. Wyman, transmitting a copy of the report of special examination and audit in which he stated in part:

> Carelessness and a weakness in the association's lending and collection policies is strongly indicated to us; however, I am still of the opinion that there have been no dishonest acts in connection with the operation of this association (hearings, p. 131).

### III. EXAMINATION OF SEPTEMBER 3, 1957

The Federal Home Loan Bank Board's Associate Director, Division of Supervision, Albert V. Ammann, did not agree with District Supervisory Agent Oakes' evaluation of the September 10, 1956, report of special examination and audit (hearings, p. 135). Preceding the next regular examination, which started on September 3, 1957, Mr. Ammann on August 5, 1957, took the following actions:

(1) Wrote a two-page memorandum of special instructions to Director, Division of Examinations, Bonesteel, once again requesting that the examiners "explore into" certain aspects of the Stagner operations at the time of the next examination since the report of the special examination showed "unmistakable evidence of self-dealing and conflict of personal interest, if not actual misuse of positions by several of its [the association's] officers" (hearings, p. 592; exhibit No. 37).

(2) Wrote a letter to Supervisory Agent Oakes flagging the case in advance for special supervisory treatment by the Washington office. The final paragraph of the letter reads in part:

> We of course are not in a position to predict what the next examination will show, but it is our reaction that it would be desirable for you to hold up transmittal of the report and related supervisory recommendation in connection with it until we both have had an opportunity to study it and exchange views (hearings, p. 594; exhibit No. 38).

Mr. Chastain was again the examiner-in-charge. This was the third time in a row, during the period from January 3, 1956, to September 3, 1957, that Mr. Chastain had been the examiner-in-charge of the examination and audit of the First Federal Savings & Loan Association of Clovis. Former Vice President Bresenham testified that during the examination Mr. Chastain stated "that he had cleared us twice and that this time he would have to find something, since he was continuing to receive complaints from people within our own organization" (hearings, pp. 34, 268).

Mr. Chastain testified he did not "recall such a conversation" and that he "would have no basis for making such a statement," and had "there been any complaints I wouldn't have received them" (hearings, p. 90). However, Mr. Chastain admitted he had told his superior, Chief Examiner Macdonald, ninth district, that Lynn Martin (vice president and third ranking executive officer of the association who had no stock in Stagner, Inc.) was supplying him with confidential information (hearings, p. 193). Moreover, C. Roy Smith testified that Mr. Chastain "during 1956 and prior" orally criticized the Stagner operations and that this was partly responsible for the dissolution of Stagner, Inc. (hearings, p. 13), which occurred May 25, 1956, less than 5 months after the examination of January 3, 1956. This would indicate that Federal Home Loan Bank Board examiners working in the field do not always (as repeatedly testified) confine their activities merely to finding and reporting the facts without criticizing operations or getting officers of an association to inform on each other.

That off-the-record intrigue and criticism was going on is further emphasized by the fact that the Albuquerque office of the Veterans' Administration had, before May 1, 1956, received information "from confidential sources that the Federal Home Loan Bank Board examiners criticized the association several months ago rather severely for having engaged in construction financing for Mr. Stagner to the extent that they did" (hearings, p. 560; exhibit No. 20, memorandum dated May 1, 1956, par. 6). That Mr. Chastain was, in fact, critical of the association for financing Stagner to the extent it had is confirmed and made a matter of record in the opening paragraph of the confidential section of his 1957 examination report in which he made the prediction—thus far 100 percent wrong—that although "the association has not suffered any loss in connection with the Stagner operations, but this is not to be interpreted that there will not be any, because in time we believe there will be" (hearings, pp. 214, 215).

The evidence is rather substantial, therefore, that confidential information critical of the large-scale Stagner operations was being supplied to Government officials working in the field. But apart from any sub-rosa complaints Mr. Chastain may have been receiving from sources connected with the association, there were other important reasons why he might have felt—during the 1957 examination—that "this time he would have to find something," although he may not recall having made such a statement:

1. Mr. Ammann's memorandum of special instructions made it clear that, in Mr. Ammann's opinion, Mr. Chastain's special examination report of September 10, 1956, so inadequately covered the "self-dealing" aspects of the Stagner operations that, although the Stagner account had been closed, past transactions would have to be reexamined.

2. Mr. Chastain had attended the chief examiners' conference in Washington in February 1957 at which he was made more aware of Mr. Wyman's increasing concern about "self-dealing" situations (hearings, p. 224).

3. Mr. Macdonald, chief examiner, ninth district, was retiring in 1958 and Mr. Chastain, if he was to succeed him, could hardly afford to leave any stone unturned in order to make an impressive showing in a case which had been spotlighted for a second time by the Washington office requesting a reinvestigation of "self-dealing."

Mr. Chastain began the 1957 examination by scrutinizing the association's files for past transactions for any evidence of so-called self-dealing. Finding that self-dealing, within Mr. Wyman's multifarious, undefined concept of the term, apparently began with the incorporation of the Clovis Investment Co. by officers of the association in 1946, Mr. Chastain wrote his superiors asking for advice as to the extent he should explore into such past transactions. He was advised, in effect, to report any matter that showed "the personal interest aspects go back many years," including what he had already developed on the Clovis Investment Co. (hearings, pp. 186, 187). This opened the door to the closed-out $400 transactions which, along with the Engler operations, would be feature items in Mr. Chastain's 1957 examination report.

*A. The $400 transactions*

During the years 1949, 1950, and 1951, Mr. C. Roy Smith, president of the association, had an arrangement with builder Jack M. Stagner pursuant to which Mr. Smith lent his personal funds to Mr. Stagner for the purpose of buying and subdividing land. In consideration for the loans Stagner paid Smith $400 for each lot or house sold "in addition to the principal amount of the loan" (hearings, p. 70; and exhibit No. 4, hearings, p. 520, letter of May 11, 1959, from C. Roy Smith to board of directors).

In a letter dated March 31, 1950 (hearings, p. 118; exhibit No. 21), to Federal Home Loan Bank Board Examiner Harbison, Mr. C. Roy Smith commented upon his personal arrangement with Stagner as follows:

> * * * we have arrangement and agreement with him * * * that he will be helped by private loans from myself and this agreement is on record in the FHA offices in Albuquerque, and on most of his FHA projects he has been helped from private loans from myself, * * *.
>
> * * * we hope and believe that in the near future Mr. Stagner will be able to stand alone and make his way without the assistance mentioned above.

This personal financing of Stagner by Smith was terminated prior to 1952 without the Federal Home Loan Bank Board taking any any official action of record in connection therewith. In short the Bank Board did not bother to look into the actual "arrangement and agreement" between Smith and Stagner at the time.

In the light of his instructions to investigate past transactions as far back as 1946 for evidence of "self-dealing," it was inevitable that Mr. Chastain would rediscover Mr. Smith's personal financing of Mr. Stagner during 1949–51. This he did and reported the $400 trans-

actions in a manner which (1) drove a wedge between President Smith and Vice President Bresenham; (2) caused Bresenham to be discharged by the association's board of directors (hearings, pp. 42–50); and (3) proved to be an important factor in the removal of C. Roy Smith—first from the presidency and management of the association and later from its board of directors. Mr. Chastain accomplished this feat—whether he did it willfully or from a lack of thoroughness and due care—by inaccurately reporting said transactions.

The first reference to the $400 transactions at page 24 of Mr. Chastain's 1957 report reads:

> * * * We learned through reliable sources that during the early stages of Stagner's construction work, particularly during 1950 and 1951, Stagner paid Mr. C. Roy Smith $400 per house under the pretense of real estate commissions, on houses financed by the association, with the exception of houses built under FHA title IX. In addition to the commissions, other items of income for Mr. Smith included interest on loans to Jack Stagner, the total of which could not be exactly determined, but estimated to be a sizable sum.

Mr. Chastain could not recall or explain why at this point in his report he used the introductory words, "We learned from reliable sources." He testified that Floyd Bresenham (and no one else) told him that C. Roy Smith collected $400 per house under the pretense of real estate commissions (hearings, pp. 193–198).

The second time Mr. Chastain mentions the $400 transactions at page 35 of his report he states:

> * * * Mr. Bresenham was asked why he paid C. Roy Smith real estate commissions, to which he answered that he didn't pay C. Roy Smith any such commission—just collected them for him.
>
> This, of course led to further discussion, and during said discussion Mr. Bresenham told Examiner Schmoker and Examiner Chastain that along at the beginning of Jack Stagner's career of speculative building for which purpose the association was to furnish, and did furnish, interim financing, it was agreed between him, Fred McGinnis and C. Roy Smith that $400 per house would be collected from Jack Stagner and said $400 per house would be divided equally between the three.
>
> However, Mr. Bresenham continued, instead of the $400 being divided as agreed, Mr. C. Roy Smith took all of it which resulted with Mr. McGinnis resigning in protest.
>
> We asked Mr. Bresenham what the $400 was for, to which he answered it was supposed to have been real estate commissions but actually Stagner sold his own houses (hearings, p. 199).

Mr. Bresenham testified that Mr. Chastain's report of their conversation regarding the $400 transactions "grossly misquoted" him in several respects and he categorically denied making such a statement as, "it (the $400) was supposed to have been real estate commissions but actually Stagner sold his own houses" (hearings, pp. 42–50).

Even if Mr. Bresenham did make some ill-advised statements concerning the $400 transactions this did not excuse Mr. Chastain (once

he had resurrected these closed transactions) from ascertaining all the relevant facts and accurately reporting same. Mr. Chastain did not do so. He admitted—

1. That Mr. Smith had voluntarily made all of his books and records relating to the $400 transactions available to him (hearings, pp. 15, 195).

2. That Mr. Smith's "books were in disagreement with what Mr. Bresenham said" (hearings, p. 200).

3. That he asked Lynn Martin, who had been Mr. Smith's bookkeeper at the time of the $400 transactions, about them but that Mr. Martin did not tell him "$400 per house was collected under pretense of real estate commissions" (hearings, pp. 193, 194).

4. That although Mr. Smith's books were in disagreement with what Mr. Bresenham said and also with what Mr. Smith had previously told Chastain, he did not recheck either matter with Mr. Smith in order to resolve the discrepancies (hearings, pp. 194, 198, 199).

5. That although Fred McGinnis was, according to the statements attributed to Bresenham, supposed to have been a party to the $400 transactions, he did not check with McGinnis to get his version of the $400 transactions (hearings, p. 97).

6. That he did not check with builder Stagner, the man who made all the $400 payments, to get his version of the transactions (hearings, p. 194).

7. That he did not completely verify and could not be sure that all the entries on Smith's books that he reported as being $400 transactions were in fact $400 transactions. Nor was he sure that all the Stagner checks he listed as $400 transaction payments belonged in that account (hearings, pp. 202, 203).

8. That he was not certain that all the $400 payments were made in connection with houses financed by the association (hearings, p. 272).

9. That the paragraph at page 24 of his report regarding the $400 payment, as real estate commissions, contains inconsistent and erroneous statements.

As previously noted, Mr. Smith and Mr. Stagner testified that the $400 payments were paid for each lot or house sold "in addition to the principal amount of the loan" and these payments were distributed on Mr. Smith's books partly to principal, partly to interest, and partly to real estate commissions; furthermore, Mr. Smith did not receive any interest in addition to the $400 payments (hearings, pp. 70, 157, 196, 197, 199, 200, 245, 246, 520, 523).

In brief, Mr. Chastain mixed the version of the $400 transactions he attributed to Bresenham, which did not agree with Mr. Smith's books, with the information contained in Mr. Smith's books and presented this admixture as the facts without reconciling the inconsistencies or verifying the accuracy of either source.

*B. The Engler operations in Hereford, Tex.*

In 1946 the First Federal Savings & Loan Association of Clovis, Clovis, N. Mex., was authorized to make loans in Hereford, Tex. (hearings, p. 20; exhibit No. 5). Its agent in Hereford was Elizabeth Womble who was paid a 1-percent fee on the loans she processed. The attorney who handled the legal work on association loans in Hereford was James W. Witherspoon.

During a period of several years prior to 1957, the association made some 150 loans on houses constructed by a builder named Engler. On the last 20-odd, Engler-built houses, the association ran into trouble. The basic difficulty according to the weight of the evidence (although C. Roy Smith admitted to some carelessness and mistakes (hearings, pp. 10, 11)) was that too many houses had been constructed in Hereford, an agricultural center whose expected growth was halted temporarily by a drought and a depression (hearings, pp. 167, 177).

Ignoring local economic conditions and the possibility that officers of the association had made honest mistakes and bad guesses, Mr. Chastain attributed the difficulty to promiscuous malfeasance on the part of officers of the association and their Hereford agent and attorney.

Mr. Chastain expressed his views of the matter in lurid detail in the confidential section of his report. On the first page he devoted two long paragraphs to Floyd Bresenham's alleged admissions of misdeeds at the behest of C. Roy Smith in making the appraisals and in processing the loans on Engler-built houses. Mr. Bresenham, in his testimony, denied making each and every statement—some of them self-incriminating—that Mr. Chastain attributed to him in this section of the report (hearings, pp. 54–59).

On the sixth and last page of the confidential section (speaking apparently for himself and his subordinate examiner Schmoker), Mr. Chastain noted "it seems to us fraud and forgery has transpired." And, in the final paragraph of his confidential comments he states in part: "In concluding our comments on the Hereford operations, it seems that Witherspoon and all others concerned have used the association to their personal and financial advantage at such times as they desired, premeditated or otherwise" (hearings, p. 222).

As evidence of fraud and forgery Mr. Chastain submitted with his examination report exhibits of certain records he found in the association's loan files which he suspected bore forged signatures and had been surreptitiously altered (hearings, pp. 218, 222).

As for his part in the suspected fraud and forgeries, Mr. Bresenham (in addition to denying the statements attributed to him by Mr. Chastain) testified that he sometimes corrected loan applications when they were incorrectly made out—which frequently happened when new employees filled in the applications (hearings, p. 39). He also testified that it was his practice to increase the amount of the loan to include closing costs (hearings, pp. 39, 56, 57). He testified further than when he and C. Roy Smith appraised property together and Mr. Smith was not available to sign the appraisals, Bresenham signed both his name and Smith's to the appraisals (hearings, pp. 38, 39, 55). Smith testified that his name was signed by Bresenham to the appraisals with Smith's approval when Smith was out of town most of one year and that "Chastain knew all about that" (hearings, p. 55). The signing of Mr. Smith's name by Mr. Bresenham constituted a policy which should be frowned upon and avoided, but it did not constitute forgery.

*C. Mr. Chastain's objectivity and credibility*

As heretofore pointed out there were several reasons why Mr. Chastain as the examiner-in-charge of the 1957 examination of First Federal Savings & Loan Association of Clovis, Clovis, N. Mex., found himself in a position where he virtually had "to find something."

Mr. Ammann's special instructions made it plain that he was anticipating receiving a report containing additional, detailed evidence of "self-dealing" on the part of certain officers of the association. To really make good Chastain needed only to come up with one or two top officials as underhanded "self-dealers."

Since the preliminary Veterans' Administration report stated that VA personnel suspected Vice President Bresenham was a silent partner in the Stagner Construction Co., it was only natural that Chastain would concentrate on Bresenham. Moreover, Mr. Chastain admitted he was receiving confidential information from Lynn Martin who was in line to succeed Bresenham in the event Bresenham was discharged and who might possibly even succeed Smith if both Bresenham and Smith had to go.

The tactics used by Mr. Chastain in the handling of the $400 transactions has already been fully discussed but those used in the handling of Engler operations only partially.

In a letter to his superior, Mr. Macdonald, dated October 4, 1957, asking for additional instructions (hearings, p. 184; exhibit No. 39), Mr. Chastain stated in part:

> The next case of personal interest involves an attorney, who has been serving the association in the capacity of attorney at law and agent in Hereford, Tex., and Dimmit, Tex., for more than 10 years. This situation developed as a result of our trip to Hereford, Tex., to find out why, if at all possible, the association has had to foreclose on so many liens on houses built by a contractor named R. J. Englor (21 since January 1, 1956). We found that the houses had been overvalued by the appraisers (Bresenham admitted the appraisal was made to fit the loan * * *. It would appear from the overall picture, that there has been a violation of title 18, however, with our limited investigatory powers, it is doubtful if we could obtain all the necessary information for an indictment. * * *

This letter is a commentary on Mr. Chastain's objectivity. After spending only 1 day, October 3, 1957, looking into the reasons why there had been so many foreclosures on Engler-built houses, he was convinced from "the overall picture" an indictable offense had occurred. Yet Mr. Chastain testified in connection with this same matter (hearings, p. 221) "I don't make the determination as to the overall picture." He also testified (hearings, p. 176):

> Mr. Moss. At the time of checking these houses, what was the condition in that community that caused such a wholesale foreclosure?
>
> Mr. CHASTAIN. As an overall economic condition, we didn't determine it.
>
> Mr. Moss. Did you make any inquiry at all?
>
> Mr. CHASTAIN. None that I recall.

Mr. Chastain's October 4, 1957, letter was referred to Washington and Associate Director Walters of the Division of Examinations, in a memorandum dated October 14, 1957, to Mr. Macdonald, advised in part:

> Mr. Chastain has made certain statements regarding the overvaluation of properties, * * *. If it is necessary in

some instances to rely upon statements made by officers or employees, an effort should be made to get them in writing.

Although Mr. Chastain was dealing with matters he consid red indictable and he was purportedly getting admissions freely from Bresenham of Bresenham's and C. Roy Smith's wrongdoings, yet he failed to follow the instructions of his superior, Mr. Walters, to try to get the alleged admissions in writing (hearings, p. 188).

Mr. Chastain testified his memory was so good he didn't have to get Mr. Bresenham's statements in writing. He could and did in some instances quote them from memory—word for word.

Of the numerous witnesses who have appeared before the subcommittee during the Federal Home Loan Bank Board hearings the only one to demonstrate a worse memory than Mr. Chastain's was his subordinate, Gottlieb E. Schmoker. Both failed repeatedly to give straight answers or any answer at all to key questions concerning certain actions they had taken stating they could not remember exactly or that they could not remember at all. Note in this connection the following questions and answers (hearings, p. 213):

Mr. Moss. Now then, let's determine just a little further. You say that any statement in your report he [Bresenham] actually made?

Mr. CHASTAIN. Yes, sir.

Mr. Moss. Did he make this statement in precisely this manner, "I was told how much loan was going to be made, and I appraised the property to fit the loan"?

Mr. CHASTAIN. Yes, sir, he stated that.

Mr. Moss. Are those his exact words?

Mr. CHASTAIN. Those are his exact words.

Mr. Moss. Did you have a transcript made of those words?

Mr. CHASTAIN. As to writing them down, right then?

Mr. Moss. As to the precise language, Mr. Chastain, did you write them down at the time?

Mr. CHASTAIN. No, sir.

Mr. Moss. Is it possible that he could have used different language and conveyed the idea to you?

Mr. CHASTAIN. No, sir. He said that, Mr. Moss.

Mr. Moss. In this precise manner?

Mr. CHASTAIN. Yes, sir.

Mr. Moss. And you have no doubt of it?

Mr. CHASTAIN. I have no doubt of it, no, sir.

Mr. Moss. And——

Mr. CHASTAIN. Because he was still talking.

Mr. Moss. Would you just repeat the question I asked you, just a few minutes ago? Exactly as I stated it.

Mr. CHASTAIN. No, sir, under these conditions, I couldn't repeat your exact question.

Mr. Moss. At hearings last year, I believe you and I had some difficulties. You had great difficulty in recalling many, many details, pertinent details, didn't you?

Mr. CHASTAIN. Yes, sir.

Mr. Moss. And Mr. Schmoker had such great difficulty that I concluded in the hearings in which he was testifying re-

cently, that it was futile to continue to interrogate him. He reached a point where he really couldn't recall anything.

And yet you now want me to believe that this statement in quotes written sometime after it was made—you put in quotes, it isn't the sense of a conversation, it is the precise statement of the individual, no contemporary notes available to you, but at a later period you could sit down and write it without the slightest doubt in your mind that it was exact in every sense.

Mr. CHASTAIN. At that time I discussed this with him so many times that I was——

Mr. MOSS. Mr. Chastain, you would pardon me if I express some doubt as to your ability in view of the experience that we have had on other matters.

Furthermore, in this connection, a quotation may be accurate but it may be quoted out of context in such a manner as to convey an entirely different meaning from that intended by the person quoted.

On the basis of the purported irregularities depicted by Mr. Chastain in the 1957 examination report, the General Counsel of the Federal Home Loan Bank Board referred the case to the U.S. attorney at Albuquerque, N. Mex., for possible criminal prosecution April 8, 1959 (hearings, p. 357; exhibit No. 46). June 1, 1959, Mr. Chastain, who had with him "all photographic evidence and reports" including those relating to the alleged fraud and forgery in connection with the Engler operations, discussed the case fully with the U.S. attorney (hearings, pp. 222, 223). After an investigation by the FBI the U.S. attorney on September 3, 1959, declined prosecution on all counts. With respect to the Engler operations the U.S. attorney stated in part: "Investigation has revealed that the appraisals of these houses were made after houses were actually inspected by officials of the company. They thought the houses were actually worth the amounts of the appraisals." As to the records Mr. Chastain furnished to him as evidence of "fraud and forgery" the U.S. attorney did not even see fit to comment upon them (hearings, pp. 168, 223).

So the fifth and last investigation—one by the VA, two by the Federal Home Loan Bank Board, and two by the FBI—came to a close 3 years and 4 months after their beginning without a dishonest act being uncovered. The U.S. attorney in declining prosecution mentions no evidence of crime. And since the fraud and forgery—the promiscuous malfeasance—that Mr. Chastain envisioned and reported proved to be unfounded, the confessions he attributed to Bresenham become immaterial.

## Evolution of the Supervisory Determination

From the record it is evident that insofar as the Wyman-Ammann headed Division of Supervision was concerned, Mr. Chastain knew how to tailor his 1957 examination report to fit their predilections.

Contrary to the General Regulations of the Federal Home Loan Bank Board, 12 CFR 501.11, Supervisory Agent Oakes at Little Rock was bypassed and the report was sent to Washington for original review (hearings, pp. 298–306). It was received December 12, 1957. Mr. Wyman and Mr. Ammann not only did not question the prima facie inconsistencies and errors regarding the $400 transactions nor the alleged oral confessions of Mr. Bresenham contained in the report but they zealously used them together with a distorted synopsis of the incomplete Veterans' Administration report and selected excerpts from past examination reports and correspondence files in preparing digests of the case for presentation to the Federal Home Loan Bank Board on April 6, 1959—1 year and almost 4 months after the report was received.

### I. AMMANN-NICHOLS DIGEST

This 20-page document signed by Associate Director Ammann and Financial Analyst Nichols of the Division of Supervision is dated February 16, 1959 (hearings, p. 632; exhibit No. 52). Those who worked on the digest other than Ammann and Nichols could not be definitely determined but it was established that Mr. Chastain was called in to help the Division of Supervision in its review of his report (hearings, pp. 192, 205–207, 301). Throughout the text of the digest untruths, half-truths, distorted statistics, and invalid charges are the rule rather than the exception.

The digest is divided into two parts—Stagner operations and Engler operations. Both operations were closed prior to the 1957 examination. A few examples among the many distortions contained in the digest will be cited and commented upon:

1. The second paragraph of the digest states:

> * * * Analysis of all this (the 800-page 1957 examination report) has been most difficult and time consuming, but it demonstrates beyond doubt that throughout the period since 1949–50, the unsound lending practices have been part of a scheme of deliberate use of the association for personal gain of management, and that this use has been concealed from the association's records and by false and misleading representations. The full extent of personal gains derived from these operations by association officials cannot be stated without access to further records outside the association, but they are known to exceed $170,000.

The quoted charge which is a brief summary of supervision's case against the accused officers of the association (insofar as the Stagner

operations are concerned) is unsubstantiated in every material particular:

(*a*) The preponderance of the evidence indicates the "lending practices" in connection with this operation were not "unsound." The association made money on each and every loan it made on "carefully planned" Stagner projects and it was at all times adequately protected. See testimony of C. Roy Smith, hearings, page 18, reading from exhibit No. 4; testimony of Floyd Bresenham, pages 36–38; and the testimony of Jack M. Stagner, pages 68–73. Compare the testimony of Supervisory Agent Oakes, hearings, pages 119–133, in which he stated that while there had been some carelessness over the years in the association's lending practices, he regarded it as a safe operation.

(*b*) There is no evidence in the record that there was a "scheme" devised to "use" the association for unlawful or unwarranted personal gain. C. Roy Smith's testimony that Stagner, Inc., was formed for the "prime purpose" of feeding "permanent loans into First Federal" and that it did so which resulted in profits to the association is undisputed (hearings, pp. 21, 256, 257). See also Jack M. Stagner's explanation of the formation and purpose of Stagner, Inc. (hearings, pp. 71–72).

(*c*) There is no evidence whatsoever that any information belonging in the association's records was ever "concealed from the association's records" (hearings, pp. 97, 98, 104).

(*d*) "False and misleading representations" were not made. C. Roy Smith informed the Bank Board's Examination Division in his 1950 letter that he was underwriting and making "private loans" to Stagner (hearings, p. 118; exhibit No. 21). In his 1953 letter he stated again that he had financed Stagner personally and that "We still believe in them and still will go along with them on any reasonable project" (hearings, p. 123; exhibit No. 28). Mr. Chastain, who was the examiner-in-charge of all examinations made of the association during the period from 1951 to 1957, testified he knew about Stagner, Inc., but that he did not inquire into its stock ownership until 1956. He stated there was a period of time when examiners did not concern themselves with things of this nature (hearings, p. 108). When he finally did raise questions, Mr. C. Roy Smith turned over all his personal books and records and had Stagner turn over to Chastain the books of Stagner, Inc.

But Mr. Ammann testified Mr. Smith's letters of 1950 and 1953 misled him. He indicated that he believed Mr. Smith was personally underwriting Mr. Stagner's speculative operations and helping him out without receiving a reasonable return in relation to the risk taken (hearings, pp. 252–254). Since neither the profit-sharing arrangements Mr. Smith had with Mr. Stagner in 1949–51 nor his ownership of stock in the Stagner, Inc., landholding corporation, violated any law, rule, or regulation applicable to officers of Federal savings and loan associations, it would seem that any disclosures Mr. Smith made concerning them would be voluntary in nature. That Mr. Ammann misinterpreted the letters in which Mr. Smith discussed his relations with Stagner does not alter the fact that there was no concealment of anything Mr. Smith was required to reveal. Throughout the hearings Mr. Ammann demonstrated a tendency to read things into documents

that were not there and a failure to read things in documents that were there.

(*e*) The figure given in the statement that "personal gains derived from those operations by association officials * * * are known to exceed $170,000" overstates the amount by approximately 50 percent, according to an analysis by GAO auditors of Stagner, Inc., records and figures submitted by C. Roy Smith summarized from his records. For example $82,500 of the alleged $170,000 represents repayments of loans, in which, of course, no element of "personal gains" is present. In addition, some of these funds were disbursed to firms not wholly owned by the accused association officers. The gains to said association officials, therefore, cannot be measured in terms of actual disbursements to these firms since operating expense and the interests of other members of the firm would have to be considered. Moreover, some of these funds were disbursed for services performed. The details showing the disbursements of these funds are shown on pages 289 and 290 of the hearings.

2. The final paragraph, page 1, of the digest states that "The association began in 1949–50" to finance the Stagners "whose prior experience had been as farmers." In fact, the association began financing the Stagners in 1946–47 and at that time the Stagners had already been constructing houses for several years (hearings, pp. 67, 68).

3. In the fifth paragraph, page 2, of the digest it is stated: "That Smith's statement in 1956 [which Smith admitted was in error, hearings, p. 15] was also a misrepresentation and far short of the whole truth is evidenced by the following: * * * Floyd Bresenham (vice-president of the association) told examiners Chastain and Schmoker that early in the association's financing of Stagner, Stagner agreed to pay (on the side) a fee of $400 per house financed." The digesters who had copies of Mr. Smith's records and Stagner's payment checks before them must have known from the information revealed that the statement attributed to Bresenham regarding "on the side payments" was not accurate. That they did know is evidenced by the fact that after the case had been presented to the Bank Board April 6, 1959, no further reference is made to the alleged Bresenham statements.

4. A footnote on page 4 of the digest states:

> Many of these construction loans were repaid by the VA guaranteed take-out loans made by the association without charging the builder the fee or discount, representing the excess of loan over market value, thus giving Stagner and his associates an increase of profit by denying to the association the consideration to which in keeping with generally prevailing practice and interest rates, it was entitled * * *.

The fact is that construction loans were made to Stagner on the VA guaranty commitments of housing on the same basis as loans were made to other builders of such homes. This policy of the association was entirely proper (hearings, pp. 36, 69, 277). That the digesters knew this is indicated by the fact that, once the case had cleared the Bank Board, it was left out of the supervisory letter. (See also and compare in this connection Wyman's testimony, hearings, pp. 449, 450).

5. The first complete paragraph, page 9, of the digest, relating to an FHA committed Stagner development states "Substantially all appraisals and loan approvals were by Smith and Bresenham." The statement is entirely false insofar as the appraisals are concerned. Appraisals were made by the FHA and the VA appraisers and were accepted by the association (hearings, pp. 37, 281). This statement was also dropped once the case had been presented to the Bank Board.

6. Second paragraph, page 16 of the digest states with regard to the Engler operations:

> It seems obvious from the foregoing that the appraisals made in support of these loans were unreliable and bore no relation to real value of the security. This is made even more clear by the illustrative cases hereinafter described. During the examination, Bresenham, in response to question by the examiner, stated orally, "I was told how much loan was going to be made and I appraised the property to fit the loan." When asked who instructed him to do this, Bresenham answered, "C. Roy Smith."

The purported conversation between Bresenham and the examiners, a conversation denied under oath by Bresenham, is taken from page 1 of the confidential section of the 1957 examination report. A similar statement—not in quotes—to the first answer attributed to Bresenham in the purported conversation appears at page 27 of the examination report but it is only in the confidential section of the report that the substance of the second purported answer is mentioned and nowhere else in the report are the two purported answers set out in conversational sequence within quotation marks.

The significance of this is that Federal Home Loan Bank Board witnesses repeatedly testified that the confidential sections of examination reports (which are removed from copies of the reports sent to the examined associations) are never used as the basis for supervisory action. Moreover, in this instance, after spotlighting the purported conversation between the examiners and Bresenham to discredit both Smith and Bresenham before the Bank Board, all references to it were dropped from the supervisory letter.

## II. WYMAN DIGEST

The Wyman Digest is in the form of a memorandum 9 pages long "To: Federal Home Loan Bank Board; From: John M. Wyman" dated March 31, 1959, prepared by Mr. Wyman's staff (hearings, pp. 394, 395, 449).

This digest (a copy of which is retained in the subcommittee files) carries forward the same distortions contained in the Ammann-Nichols Digest, restating some in slightly different language for brevity and adding a few new ones. The second paragraph of the Wyman Digest reads:

> It was not until the latest examination (as of September 3, 1957; the report is comprised of some 800 pages of comments, schedules, and exhibits requiring extended study and analysis and conferences with the examiner) that evidence was obtained that such lending practices had been and are definitely related to, and had been and are a part of, a scheme of misuse of official position for personal gain ever

> since 1950; and that substantial gains (at least $170,000) had been so obtained behind a screen of representations calculated to deceive, and that did deceive, examiners and supervisors. The essential facts now available as to these matters are set out in the attached memorandum dated February 16, 1959, and are more briefly summarized as follows:

Note that the above charge which repeats in slightly diluted language the Ammann-Nichols distorted summary of the case states in so many words that part of the evidence contained in the Ammann-Nichols Digest was adduced through personal conferences with the examiner. The use of information received from conferences with the examiner; the use of material contained in the confidential section of the examiner's report; the use of the incomplete Veterans' Administration report made available to Wyman on a confidential basis; and the use of the digests themselves—in short, the use of material and documents which the officers of the association, under the Wyman modus operandi, would never have a chance to examine or refute—to provoke the Bank Board into authorizing drastic supervisory action in connection with a solvent and thriving association is Star Chamber technique of the first order.

At page 9 of the Wyman Digest appears the following false and petty charge based on information contained only in the confidential section of the 1957 examination report:

> the amount of loan applied for was increased in many, if not all instances, at the request of the Hereford agent (Womble) to include her 1 percent origination fee, attorney's and recording fees, and abstract and insurance costs;

Mr. Bresenham testified that closing costs were frequently included in the amount of loans made as a standard practice and that all association agents (including Mrs. Womble) followed this procedure (hearings, pp. 56–59).

Perhaps nothing contained in the Wyman Digest demonstrates the intemperance—the unconscionable bias—of the author or authors thereof more clearly than the fantastic charge against Stagner. It reads:

> To sum the matter up: That operation of the association is unsafe or unsound is made clear by the following facts * * *. 1. In the financing of an utterly irresponsible builder (Stagner) to the tune of about $4 million in the years 1950–56.

In the documents upon which the digest is based, the only derogatory information about Stagner appears in the Veterans' Administration report. It is to the effect that the Veterans' Administration regional loan guarantee officer had observed that Stagner construction "was not usually up to satisfactory standards." That a "spot-check" of some Stagner projects "indicated the materials, the workmanship generally * * * were most unacceptable." However, all construction on these selfsame projects had, as shown on the face of the Veterans' Administration report, passed FHA inspection. It would seem, therefore, the primary blame for any completed construction being substandard—if in fact it was substandard—rested with the FHA inspectors who approved the materials and workmanship as the houses were being built. And FHA "continued to inspect and

approve the same type of house being built by Stagner at the time VA was questioning the quality of construction" (hearings, p. 37). Nevertheless, neither Wyman, Ammann, nor Chastain checked the Veterans' Administration charge with FHA.

Moreover, Mr. Chastain testified he had never observed or reported that Stagner construction was substandard (hearings, pp. 106, 107). Yet Wyman and Ammann solemnly testified that they thought they were justified in relying on the unchecked and unverified Veterans' Administration charge (hearings, pp. 278, 280, 419).

The weight of the evidence in the record is that Stagner construction was not substandard. Stagner described himself as a typical project developer who had constructed approximately 4,000 homes and that the only major difficulty he ever had about quality of construction concerned the two projects mentioned in the Veterans' Administration report. He testified this difficulty was politically inspired and as soon as he switched his support to the incumbent official responsible for it the problems immediately vanished and he continued building houses that passed the Veterans' Administration inspection without further questions or problems (hearings, pp. 69, 70).

C. Roy Smith testified, in regard to Stagner construction, "We didn't think there were any better houses in Clovis and it is proven by the way the houses are standing up there now. The houses he first built are still good" (hearings, p. 18).

As for Stagner being otherwise irresponsible, Bresenham testified he borrowed approximately $10 million from the association and paid back every dollar of it with interest (hearings, pp. 36, 38).

Stagner testified that as a borrower he "did nothing" for First Federal "but to make money for it" (hearings, p. 73). The board of directors of the association confirm Stagner's statement in the following language:

> We do not feel that the funds of the association were at any time jeopardized in the handling of the Stagner account. The association had a blanket mortgage on any and all property owned by Mr. Stagner at all times. The Stagner account was a very profitable one, now closed out, for the association (hearings, p. 503; exhibit No. 4).

In its summary the Wyman Digest states in part:

> It seems to me imperative that conclusive steps now be taken to put an end to the unsafe or unsound operation of the association and to the self-dealing relationships and practices which are the cause and the paramount policy of that operation.

This statement regarding the Stagner operations was made more than 2 years after the Stagner account had been closed. Mr. Wyman's recommendation that steps be taken to put an end to "self-dealing relationships" was therefore paradoxical. What he really meant was that the association officers should be punished ex post facto—that is, removed from office. In a subsequent amazing statement in the Wyman Digest summary he makes this amply clear. It reads:

> And while the facts have firmly convinced me that the authority to make loans in Hereford should be terminated immediately and that the two Smiths and Bresenham have forfeited all right to hold any office in the association, I am

> not certain just what were the real nature and scope of pertinent supervisory discussions with the parties responsible for causing, and for not correcting and preventing, such operation and practices.

Since Engler had stopped construction in Hereford approximately 2 years prior thereto, this recommendation also has the retroactive penalty element in it. The minimum punishment, insofar as Mr. Wyman was concerned at that time, was that the two Smiths and Bresenham would have to be cashiered. That Mr. Wyman did not actually believe these officers were irresponsible or endangering the assets of the association is evidenced by the fact that no examination of the association had been made or other supervisory action taken for a period of a year and 6 months prior to the date of his digest.

In the last paragraph of his digest, Mr. Wyman requests that "this matter" be placed on the agenda for discussion with the Bank Board.

### III. BANK BOARD'S ACTIONS

On March 24, 1958, C. Roy Smith, president of the First Federal Savings & Loan Association of Clovis, Clovis, N. Mex., wrote a letter to Senator Chavez, Washington, D.C., requesting that the Senator—

> call the Home Loan Bank Board there and request that we be given a public hearing under section 1464(d)–1 of the Home Owners' Loan Act, in order that we be given the right to state our position on certain charges the Home Loan Bank Board has or will bring against us relative to our relations with builder Jack Stagner here.
>
> We feel that we should be granted the right of a public hearing (hearings, p. 5, exhibit No. 1A).

Senator Chavez referred Smith's letter to the Bank Board and Chairman Albert J. Robertson replied to the Senator April 2, 1958, stating in part:

> Mr. Smith's letter presumably alludes to the latest supervisory examination of that association. The examination report, which is rather lengthy, is now being studied and we do not know just how soon that work can be completed. Until that has been done, and the information has been evaluated, we cannot say, of course, what supervisory action may be appropriate or whether a hearing under section 5(d) of the Home Owners' Loan Act would be in order.
>
> You may be assured, however, that when a conclusion is reached as to such action as may be proper, the association's board of directors will be duly apprised and the action taken will be in accordance with applicable law and regulation (hearings, p. 6, exhibit No. 1C).

Mr. Wyman must have realized he did not have a case against the officers of the association which would stand up in a hearing conducted in accordance with the applicable provisions of the Home Owners' Loan Act. Surely no competent lawyer would have recommended attempting to prove to an unbiased hearing officer that any of the officials of the association had violated any law, rule, or regulation applicable to officers of Federal building and loan associations on the basis of the incomplete, unverified, conflicting, and conjectural ad-

mixture of information upon which the Ammann-Nichols and the Wyman digests were based. General Counsel Creighton of the Bank Board testified that had he been preparing the case for an administrative hearing he would not have accepted this information as facts without further investigation (hearings, p. 371).

Apparently Mr. Wyman took the case to the Bank Board on the premise that even though the accused officers of the association had operated this solvent and thriving association within the law they had, nevertheless, forfeited their rights to hold office by violating the indefinable Wyman creed against so-called "self-dealing." Indeed, he testified: "Well, we have no regulation that deals with the matter of self-dealing" (hearings, p. 417).

* * * * * * *

> We were convinced by the facts disclosed by the 1957 examination report that Mr. C. Roy Smith, who was then president of the association, and Mr. Floyd Bresenham, who was then a vice president of the association, had, over a considerable period of time, so violated their duties as fiduciaries that they were unsuited to management positions with this institution, because their established proclivity and disposition to deal with themselves in managing the association's affairs constituted an unjustifiable threat to the best interests of the association's members, the public, and the Insurance Corporation (hearings, p. 404).

But there was no law which authorized Mr. Wyman to remove officers of an association because he thought they were unfit to serve. In the absence of such legal authority the record is clear that he decided he was justified in requiring their removal by invoking the charge in 1959 (based on an examination held in 1957 and gleanings from more ancient documents) that the operations of the association "continues to be unsafe or unsound" and having the Bank Board confirm, or appear to confirm, an unappealable determination to that effect. The accused officers would then likely walk the plank upon his demand—the stage being set, or appearing to be set, for taking the more drastic action—seizure.

That such was his strategy is supported by C. Roy Smith's testimony that Mr. Wyman conceded at the Little Rock meeting May 21, 1959—when questioned by the association's attorney Otto Smith—that there had been no violation "of law or regulation" (hearings, p. 16). Mr. Oakes testified to the same effect (hearings, p. 325). Moreover, Mr. Wyman admitted under questioning by the chairman of the subcommittee that seizure was the only means by which the Bank Board could effectuate the removal of directors (hearings, p. 462).

Finally it should not be overlooked that Mr. Wyman virtually had to take the position at the Little Rock meeting that his determination of "unsafe or unsound" was not based on violations of "law or regulation." Had he stated violations of law or regulation were involved, attorney Otto Smith could have immediately stopped the Little Rock proceedings by insisting upon 30 days notice as to what the violations were and an opportunity to correct them in accordance with section 5(d)(1) of the Home Owners' Loan Act of 1933, as amended (12 U.S.C., sec. 1464(d)(1)). Clearly Mr. Wyman's strategy throughout was to

avoid at all costs proceedings and a hearing under section 5(d)(1) of the statute which the association had requested.

According to the official minutes of the Bank Board dated April 6, 1959, the Board considered Mr. Wyman's memorandum dated March 31, 1959 (the Wyman Digest to which was attached the Ammann-Nichols Digest), and discussed with him "matters of supervisory concern with respect to the First Federal Savings & Loan Association of Clovis, Clovis, N. Mex." Whereupon the Bank Board instructed Mr. Wyman, its Director of Supervision, as follows:

> The Board instructed the Director to fully advise the board of directors of that association as to the matters of supervisory concern arising from its management and operations and to request the board of directors to provide the association with sound management and sound practices, and to request that the board of directors select a committee of three from among their members who will be acceptable to the Director and who will be authorized and directed promptly to develop a program which will correct said matters of serious supervisory concern and provide for the sound management and operation of the association in a manner acceptable to the Federal Home Loan Bank Board (hearings, p. 391).

Thus the Bank Board opened the door, part way at least, for Wyman to go after the top officials of this solvent and thriving association on the ground of unsafe or unsound practices although supervisory officials of the Bank Board were so little concerned about its then current operations they had not bothered to have the association examined for a period of over 1 year and 6 months. In fact, they had held up the examination (hearings, p. 152) so that they could continue to juggle the old, faulty pieces of information they had concerning two closed out accounts into a distorted finding that the association was currently being operated in an "unsafe or unsound" manner. A further significant fact in this regard is that the credit practices of the association, the item of major criticism in the last supervisory letter to the association—Supervisory Agent Oakes' letter (hearings, p. 588, exhibit No. 35) following the 1956 special examination—had been substantially, if not fully, corrected by 1959. Indeed, the association's slow loans had been decreased by 1957 to equal the regional average and by 1959 they were somewhat less than the regional average (hearings, p. 477). Finally, the so-called self-dealing aspect of the case had stopped almost 3 years prior to the Bank Board's action on April 6, 1959. The accused officials had disposed of their stock in Stagner, Inc., May 25, 1956.

## Wyman-Oakes Supervisory Actions

### I. FINAL PREPARATIONS FOR THE LITTLE ROCK MEETING

The Wyman-Oakes supervisory actions were begun by Supervisory Agent Oakes sending a copy of the 1957 examination report—minus its six page confidential section—to the association on April 14, 1959. The transmittal letter requested that "In view of the many questionable practices set out in the report and the supplemental report," the association directors meet with the supervisory agent and other supervisory officials in Little Rock on May 7, 1959 (hearings, p. 300, exhibit No. 43). President C. Roy Smith of the association asked for an extension of time to prepare answers to the report and the date of the meeting was changed to May 21, 1959 (hearings, pp. 7, 302).

As a result of their review of the parts of the examination report sent to them, the directors of the association discharged Vice President Bresenham late in April 1959, because of the answers the report stated he gave to Mr. Chastain's questions about the $400 transactions (hearings, pp. 42–50). The directors also prepared answers to the items criticized in the examination report including the $400 transactions to take with them to the Little Rock meeting (hearings, p. 7).

Meanwhile Mr. Wyman was converting his nine-page digest into a nine-page ultimatum in the form of a supervisory letter to the board of directors of the association. As heretofore mentioned in comments on the Ammann-Nichols Digest, Mr. Wyman left out of the "basket of charges" contained in the supervisory letter any reference to the following:

1. The charge that Bresenham had disclosed to the examiners that C. Roy Smith had collected $400 per house "on the side" on loans the association made to Stagner in 1949–51.
2. The charge that officers of the association accused of self-dealing were sharing in profits derived by reason of the association's failure to charge permissible discounts on the VA-committed projects constructed by Stagner.
3. The charge that Bresenham and C. Roy Smith made substantially all the appraisals on Stagner-built houses and inferentially lots sold by Stagner, Inc., to Stagner Construction Co. notwithstanding the fact that they were VA- and FHA-committed projects.
4. The charge that Bresenham had confessed he made appraisals on Engler-built houses to fit the loan at C. Roy Smith's request.

Had these serious charges been true, they would have established a case of misuse of office for personal gain and other acts of malfeasance. But Wyman's staff surely knew that they did not have competent evidence to support these charges and that it was unlikely the directors of the association would take charges of such a serious nature lying down. That they would not have done so is evidenced by the fact that they prepared a complete explanation and answer to the only one of said serious charges of which they had notice—the purported $400 "on-the-side" payments covered in the supplemental part of the 1957 examina-

tion report which had been sent to them. Once, therefore, said charges had served their purpose of spurring the Bank Board into action, it would not be politic to put them in the supervisory letter and afford the directors of the association an opportunity of opening up on them and refuting them one by one. It could so arouse the directors that they might go right on challenging the entire supervisory letter—distorted item by distorted item. Mr. Wyman and his staff did not make this strategic error. Indeed, the tactics used by Mr. Wyman in getting the directors of the association to accede to the demands of the supervisory letter without challenging its contents is a strategic masterpiece.

On May 18, 1959, the day before he left for the Little Rock meeting, Mr. Wyman sent copies of the supervisory letter to members of the Bank Board (which they apparently never saw (hearings, pp. 392, 396. 397)) with a covering memorandum which stated in part:

> * * * a meeting has been arranged with the board of directors at Little Rock, Ark., for May 21, and there is attached hereto copy of letter which will be read and delivered to the board of directors at that time. Particular attention is called to the last two pages of the letter under the subheading "Corrective Action Required" (hearings, p. 358; exhibit No. 47).

Note that Mr. Wyman stated that he was going to the meeting to read and deliver the letter. That he intended that any discussion would be limited to an explanation and clarification of the "Corrective Action Required" is made unmistakably clear by the introductory paragraph under that heading. It reads:

> It is imperative that conclusive steps now be taken to put an end to the unsafe or unsound operation of the association and to the self-dealing relationships and practices which are the cause and the dominant policy of that operation. Therefore, we must insist that the directors, at this meeting, give us a letter over their individual signatures committing themselves to take the following actions promptly upon their return to Clovis and in any event not later than May 31, 1959.

Mr. Wyman drafted the letter for the joint signatures of himself and the Supervisory Agent Oakes. Mr. Oakes testified that he read the letter, had some discussion of it with Mr. Wyman, and, assuming the charges therein were true, signed it before the meeting (hearings, p. 303).

Mr. Wyman took one additional step in his preparation for the meeting. He prepared a draft of a letter dated May 21, 1959, addressed to the Federal Home Loan Bank Board for the signatures of all the directors of the association which he attached to the supervisory letter. It reads:

> We, the undersigned directors of the First Federal Savings & Loan Association of Clovis, Clovis, N. Mex., hereby commit ourselves, individually and as the board of directors of the association, to take all of the actions requested and made necessary by the letter of May 21, 1959, from Mr. John M. Wyman and Mr. Ennis M. Oakes, which letter was, on that date, read in full and delivered to us by Mr. Wyman at

> Little Rock, Ark.; and we also commit ourselves to do all things necessary to effectuate full compliance in all respects with the requests and with the corrective program as stated in that letter, including the designation of directors Comer, Rodes, Baxter, Ballew, and Spaulding as the committee, with power and direction so to act, to develop, and to effectuate such compliance and program (hearings, p. 490; exhibit No. 3).

Thus the record is clear that Mr. Wyman planned only to read the letter in full and deliver it and make sure the directors understood its corrective action requirements. There is nothing in the record to indicate the accused officers of the association were to have a ghost of a chance of defending themselves against the distorted assortment of charges and findings contained in the supervisory letter—notwithstanding the assurances contained in Bank Board Chairman Robertson's letter heretofore cited that "the association's board of directors will be duly apprised and the action taken will be in accordance with applicable law and regulations."

The "Corrective Actions Required" by the supervisory letter—the demands it made—went far beyond the instructions Mr. Wyman had received from the Bank Board as reported in the official minutes dated April 6, 1959. They also exceeded the authority vested by law in the Bank Board itself (hearings, pp. 391–398, 406–409, 422–430).

In substance the supervisory letter (as clarified by a footnote added at the meeting and as supplemented by the covering letter prepared for the directors' signatures) required the directors of the association to commit themselves before leaving the meeting to:

1. Adopt a resolution abolishing the agency at Hereford, Tex., stating (after it had been in operation almost 13 years) that it was being operated in violation of rules and regulations.

2. Adopt and confirm by appropriate resolutions the directors' action at this meeting establishing a committee of five directors and designating as members thereof persons who are unobjectionable to the undersigned, and directing such committee to prepare a program for the future management, policies, and operations of the association.

> This * * * program shall include the employment of a new managing officer vested with authority fully consonant with that position; and an increase in the number of directors from 7 to at least 11 and the election to the additional positions thus created of responsible citizens of the community, each of which persons, including the new managing officer, shall have been found acceptable by and to the supervisory agent prior to his appointment or election.

The instructions given to Mr. Wyman by the Bank Board were:

> To advise the board of directors of the association as to the matters of supervisory concern;
>
> To request the board of directors to provide the association with sound management and sound practices; and
>
> To request the board of directors of the association to select a committee of 3, from among their members, acceptable to him, to develop a program to correct the matters of supervisory concern and provide for sound management and operation of the association in a manner acceptable to the Bank Board.

## II. LITTLE ROCK MEETING

No official record was made of the Little Rock meeting—no minutes were taken. The testimony of witnesses who participated in the meeting indicates, however, that Mr. Wyman carried it off exactly as he planned except for the extraordinary compassion shown Otto Smith, director and attorney for the association, who was among those listed in the Wyman Digest as having "forfeited all rights to any office in the association."

Mr. C. Roy Smith's testimony relating to the Little Rock meeting tells rather graphically how and why Mr. Wyman's planning worked (hearings, p. 7):

> Mr. C. ROY SMITH. * * * We studied the supervisory report of examination of September 3, 1957, very carefully, and made up an extensive answer and explanation of all of the charges and allegations contained in the report which we took with us to Little Rock, and which we were never allowed to use.
>
> Directors of the First Federal able to make the trip to Little Rock were Mr. Otto Smith, director and attorney for the association, now deceased; Mr. Arno Rodes, director; Mr. W. H. Spaulding, director; J. B. Comer, director and chairman of the board; and myself, director and president.
>
> The meeting was called for 9 a.m. May 21, 1959. About 9:45, Mr. John M. Wyman, director of supervision; Mr. Ennis Oakes, supervisory agent for the Little Rock district; and Mr. H. H. Chastain, chief examiner for the Little Rock district, came in without any preliminaries and Mr. Wyman read the letter dated May 21, 1959, addressed to the board of directors of the First Federal Savings & Loan Association of Clovis, in its entirety, and which we had not previously seen; pushed it out on the table and stated that he, Mr. Oakes, and Mr. Chastain, were going out for coffee, that we could discuss it and sign it.
>
> Mr. MCCLELLAN. Now Mr. Smith, do you have a copy of that supervisory letter of May 21, 1959, with you?
>
> Mr. C. ROY SMITH. Yes, sir.
>
> Mr. MCCLELLAN. I would like—is this a photostatic copy of it?
>
> Mr. C. ROY SMITH. Yes, sir; it is.
>
> Mr. MCCLELLAN. Now, you stated they asked you to sign it. On the cover page there is a letter attached dated May 21, 1959, addressed to the Federal Home Loan Bank Board, and signed by five of the seven directors of the association.
>
> Is that what you were asked to sign?
>
> Mr. C. ROY SMITH. Yes, sir.
>
> Mr. MCCLELLAN. This cover sheet?
>
> Mr. C. ROY SMITH. Yes, sir.
>
> Mr. MCCLELLAN. That was already attached to the letter when it was handed to you?
>
> Mr. C. ROY SMITH. Yes, sir.
>
> Mr. MCCLELLAN. To the supervisory letter?
>
> Mr. C. ROY SMITH. Yes, sir.
>
> * * * * * * *

(Hearings, p. 9:)

Mr. C. ROY SMITH. We did discuss it briefly, and signed it.

Mr. Wyman, Oakes, and Chastain returned shortly. Our attorney, Mr. Otto Smith, asked for clarification of the broad language used in the letter under corrective action required on page 9, as to the management.

Mr. Wyman then stated that he would do so, and then added the addendum at the foot of page 9 of the letter, requiring new management.

We protested this action through our attorney. Mr. Wyman then turned to me and asked if I didn't have an insurance and abstract business. I replied that I did.

He then made the statement that I would be all right. I had my business and could continue on as chairman of the board.

Mr. Oakes joined him and said, "Yes, you can remain on as chairman of the board."

We verbally accepted this agreement.

* * * * * * *

(Hearings, p. 16:)

Mr. WALLHAUSER. Mr. Chairman, could we go back to the meeting for a minute, of May 21, in Little Rock, when you were presented with a letter to sign, as I remember your statement.

For the first time then, you then read this letter of May 21, which we are interrogating you about.

You said that you had prepared a long list of answers, carefully prepared by your attorney, and I am interested to have you expand on that a little bit as to why you were denied the opportunity to make a defense of these charges, or what was indicated to you as the reason for not allowing you to make a defense.

Mr. C. ROY SMITH. Well, Mr. Wyman just read this instrument in its entirety. He pushed it out on the table and said, "We are going out for coffee."

He said, "You can discuss it and sign it while we are out."

We weren't asked for any defense.

Mr. WALLHAUSER. Well, did you offer to produce a defense to the charges?

Mr. C. ROY SMITH. No; when they came back we tried to—our attorney, Mr. Otto Smith, asked—well, he really asked Mr. Chastain if there was any involvement of the assets of the association. Mr. Chastain refused to answer.

Mr. Wyman answered it for him and he said there was absolutely no question as to the assets of the association.

Then Mr. Smith asked him if there was any violation of law or regulation, and he said there absolutely was not, that it was the same old charge, unsound and unsafe, and that we had to——

Mr. WALLHAUSER. Excuse me. The same old charge?

Didn't I understand you to say that this was the first time that you knew that there was a charge of unsafe and unsound practice?

Mr. C. ROY SMITH. I believe that was mentioned in the 1956 examination.

Most of the complaint there was on our—in that 1956 special examination—it was on our credit reports on the borrowers.

Mr. WALLHAUSER. That you had not secured sufficient credit reports?

Mr. C. ROY SMITH. That is right, and we tried to explain that to Mr. Chastain, that in the towns that we operate in out there, we hadn't had a dependable credit reporting service.

We operated for 20 years without such, and we didn't have a foreclosure. As soon as we did get dependable service, we started using them, certainly, on all loans.

Mr. WALLHAUSER. Well, while these gentlemen were out of the office for coffee, you no doubt discussed every item in this letter, didn't you?

Mr. C. ROY SMITH. We discussed it, but early in 1959 the Southwest Savings & Loan Conference had a meeting in Biloxi, Miss. Mr. Ennis Oakes was at that meeting, and we had not yet heard from this examination.

Mr. Oakes came up to me and voluntarily told me that the thing was all right, not to worry about it.

You see, it had been a year and a half, and we hadn't heard from it.

He said, "Just don't worry about it. It is going to be all right."

So on that basis, when they went out for coffee, why, I was close to 70 years old, and I had no objection to going back to the chairman of the board, and I suggested to the board that we go ahead and accept it, because Mr. Oakes had assured me that everything was all right.

Then, when they came back in, they both assured me that I could go back to chairman of the board and remain on the board.

Mr. WALLHAUSER. So that you basically didn't believe that you were being charged with anything that was irregular?

Mr. C. ROY SMITH. No, sir.

Mr. WALLHAUSER. Was there much discussion among the directors in defense of you, or in an effort to prevent it?

Mr. C. ROY SMITH. Our attorney, Mr. Otto Smith, did try to defend us, and it didn't do any good.

Mr. WALLHAUSER. Was any threat made that if you didn't sign this letter, other actions would follow?

Mr. C. ROY SMITH. Not verbally; no, sir.

Mr. WALLHAUSER. Was there any indication, or was it indicated?

Mr. C. ROY SMITH. No, sir; we just felt it.

Mr. WALLHAUSER. You felt it?

Mr. C. ROY SMITH. That is all.

There was no threat; no, sir.

Mr. WALLHAUSER. Your intuition, or some other idea?

Mr. C. ROY SMITH. Well——

Mr. WALLHAUSER. Prompted it?

Mr. C. ROY SMITH. Well, we had the *Long Beach* case just prior to that, and we had that in mind, and we didn't want to have anything like that happen.

Mr. WALLHAUSER. You were trying to avoid trouble for the association, in other words?

Mr. C. ROY SMITH. Yes, sir.

Mr. WALLHAUSER. That is all.

## Supervisory Agent Oakes' Testimony Re Little Rock Meeting and Some Facts and Circumstances He Did Not Know and Some He Overlooked

Mr. Oakes' testimony regarding the Little Rock meeting differed in some minor details from Mr. Smith's. For instance, Mr. Oakes stated that upon completion of the reading of the letter—

> Mr. Wyman didn't pitch the letter at him and ask him to sign it. He didn't say we are going out for coffee. He asked for discussion, and if I recall correctly, I suggested myself to Mr. Wyman, I think it matters little who suggested to who—that we might withdraw from the meeting in order to give Mr. Smith, and the other directors, an opportunity to discuss everything that was in the letter.

The gist of Mr. Oakes' testimony was that he felt certain that if the directors had indicated they had a defense to the charges in the supervisory letter the action taken at Little Rock would not have been taken. He could have persuaded Mr. Wyman to reconsider and to give the directors additional time to answer (hearings, p. 308).

Mr. Oakes testified it never occurred to him that the directors were afraid to cross Mr. Wyman or challenge the contents of the letter after it had been read and delivered to them for fear of seizure of the association (hearings, p. 310).

But there is much in the background of the case that Mr. Oakes did not know. Contrary to regulations he was bypassed and he did not participate in the preparation of the supervisory letter. He apparently did not know that talk of seizure of the association began with the special examination of September 10, 1956 (hearings, p. 33). Nor was he aware that C. Roy Smith had asked for a public hearing under section 5(d)(1) of the Home Owners' Loan Act in 1958 and that he had been assured that the "board of directors will be duly apprised and the action taken will be in accordance with applicable law and regulation" (hearings, p. 315).

At Little Rock the directors were met with the antithesis of such assurances. True, they had been sent parts of the 1957 examination report and told to study them before coming to a meeting but they had not been told what the actual purpose of the meeting was—they had not been "duly apprised." They had assumed the meeting would concern itself with a discussion of the criticisms contained in the portions of the examination report they had received, so they prepared answers, but their answers did not cover half the distorted charges contained in the 9-page supervisory letter read and delivered to them—duly signed and executed with an attachment prepared for their signatures of acceptance of its unlawfully demanded "corrective action" provisions. This must have been quite a shocker and intimidator, as it was undoubtedly intended to be.

The supervisory letter contained charges based on the confidential section of the report, on past examination reports, on past correspond-

ence, on past conversations, on past management questionnaires, the incomplete VA report, etc. (hearings, p. 490; exhibit No. 3). Given 90 days a Philadelphia lawyer with a staff of investigators might have been able, if he had access to all the documents used by Wyman's staff, to prepare answers.

For instance C. Roy Smith testified that while he knew the VA had terminated the automatic guarantee privileges (to which the association paid no attention) he did not know about the VA investigation (hearings, pp. 12, 13). The VA regional office notice of termination to the association made mention only of "a recent field examination * * * into the credit policies of your firm" and "fees paid as closing costs," and then requested "that within 30 days * * * your firm discontinue closing of loans on an automatic basis" (hearings, p. 64). How could Mr. Smith be expected, therefore, to evaluate and to answer, before this meeting of a few hours was over, Wyman's embellished version of "the grounds" for the VA's action which appears on page 2 of the supervisory letter and reads:

> In June 1956, after a field investigation, VA terminated the association's automatic guarantee privileges on the grounds that loans made were ineligible as to credit, inadequate credit investigations were made, construction was substandard and unsatisfactory, and association officials were believed to have personal interests in the construction and sales.

Then there were the charges that he had deceived Bank Board officials by making false statements in letters, in answers to questionnaires, and in oral statements to Supervisory Agent Oakes. This involved information which no law, rule, or regulation required him to give. As heretofore pointed out the evidence adduced at the hearings indicates that for the most part it was not a matter of giving misleading information—it was rather a matter of misinterpretation by Mr. Ammann, et al. Mr. Smith admitted, however, that he erroneously gave one wrong answer to a question contained in a management questionnaire concerning the $400 transactions (hearings, pp. 15, 16). That was in 1956—4 years after the termination of the $400 agreement. Smith had previously, in his letter of March 31, 1950 (hearings, p. 118; exhibit No. 21)—while the agreement was still in effect—put the Bank Board officials on notice of the agreement stating that he was making "private loans" to Stagner. The Bank Board did not bother to investigate nor did it tell Mr. Smith to stop making the loans. Seven years later, 5 years after the agreement was terminated, Mr. Chastain investigated and Mr. Smith voluntarily turned over to Mr. Chastain all his personal books and records relating to the transactions. Yet the supervisory letter stating "the examiner, having obtained access to Mr. Smith's personal records stored in the association's office," charged Mr. Smith with misrepresenting the facts concerning these transactions.

The irresponsible use which Mr. Chastain made of these records has already been commented upon and here we find them being used in conjunction with management questionnaires to brand Mr. Smith as a "gross" falsifier of "material facts" before his fellow directors. This again, as in the Alice, Tex., case, brings up the question as to whether the ambiguous management questionnaires serve any legiti-

mate purpose or whether, as a practical matter, they have become primarily instruments for entrapment and blackmail. In any event, the charges of misrepresentation made against Mr. Smith must have been a shocking and embarrassing thing when read by Mr. Wyman, putting Mr. Smith in an indefensible position. Mr. Smith could ill afford to lose his composure and accuse his accuser of distorting and misrepresenting the facts. His accuser virtually had the power of life or death over the operations of the association. Besides, Mr. Smith, taken unawares by such reprehensible tactics, had to rely solely on his memory, and much concerning these matters had faded from his memory. At the hearings he testified he could neither recall the letter he had written to Examiner Harbison in 1950 (hearings, p. 118), cf. exhibit no. 4, last paragraph of McGinnis letter, hearings, p. 523) nor the conversations and correspondence (hearings, p. 22) that he allegedly had over the years with Mr. Oakes "regarding unsound practices and conflicting interests." Mr. Smith was therefore in a dilemma at Little Rock where it might have been worse than futile to start arguing the matter with Mr. Wyman.

That it was futile to argue—that directors of the association could not be sure that an argument with supervision could ever be won or terminated is demonstrated by the basic "illustration" of unsafe or unsound lending practices cited on the first page of the supervisory letter. Said basic illustration was taken from the examination report of 1953 and reads:

> A blanket loan of $350,000 secured by, and to build, 80 houses was so unsoundly made and disbursed in 1952 that an increase of $225,000—to a total of $575,000—was found necessary. Therefore, another blanket loan of $225,000 was made on 26 of the 80 properties; the 26 properties had a completed FHA-appraised value of only $240,000—the $225,000 loan exceeding 90 percent of completed value, in violation of applicable regulation. By the next examination date the loan had been reduced by only $46,450 whereas security appraised at $99,300 had been released—leaving the loan balance $41,000 in excess of the FHA valuation of the remaining security. There were other later instances of a similar nature.

Mr. Stagner in his testimony challenged the figures and the charge made in the illustration that disbursements were made in connection with this account in excess of 90 percent of loan to appraisal value (hearings, p. 69).

Mr. Stagner's testimony suggests the possibility that an error was made by Mr. Chastain in his 1953 examination report in connection with this account. This possibility finds further support in correspondence and reported conversations between officials of the association and Supervisory Agent Oakes during 1953. While President Smith admitted that an overdisbursement of $13,000 was made to Stagner due to a mistake in setting up the account, it appears he maintained that Mr. Chastain's failure to report all the relevant facts pertaining to the account presented a much worse picture of the situation than actually existed. (See hearings, p. 123; exhibit No. 28 and hearings, p. 579; exhibit No. 30.) Also, Vice President Bresenham in a letter to Supervisory Agent Oakes dated November 23, 1953 (a copy of which is retained in subcommittee files), indicates the loan was

within the 90 percent of appraised value except when the association's interest charges ran it over the 90-percent figure. In short, while the officials of the association admitted to some errors in the handling of the 80-house project account, it appears they were never convinced that Mr. Chastain's report of the matter was entirely fair and accurate.

There are two additional factors in connection with this account that are significant. First, according to Mr. Stagner's testimony, there was a labor strike for 45 days which delayed the completion of the project. Second, the alleged overdisbursement on inadequate security was referred by "Bank Board examiners" (undoubtedly Mr. Chastain) to the law firm of Smith & Smith, which represented the association, for a legal opinion. Attorney Tharp of said law firm held that, by reason of the blanket mortgage the association had on the property owned by Jack M. Stagner and his wife, the association had adequate security for the loans and advances made on the 80-house project in question (hearings, p. 618; exhibit No. 49). This opinion is apparently based on facts and figures supplied by Mr. Chastain, and the attorney pointed out that it was sound business practice to make the second loan to Stagner on this project in order to protect the association's first loan.

It does not appear that the association was ever advised as to whether the Bank Board agreed or disagreed with the opinion of the association's attorney. On the contrary, it appears the loan was paid back in full before November 1954 and the account closed without the dispute being fully resolved or the record being set straight (hearings, p. 583; exhibit No. 33). Nevertheless, 5 years after every dollar of the loan was paid back, Mr. Wyman, apparently having at last rejected the views expressed in the attorney's opinion and all explanations of the transaction given by association officials, uses the worst possible version of the disputed record of this closed transaction as the principal basis of a charge of "unsafe or unsound" operations so grave as to require the removal of the management officers. In the light of this example of Mr. Wyman's reasonableness and fairness, the possibility of getting anywhere trying to argue with him must have appeared very slight to the directors.

That the directors of the association and not Mr. Oakes had the situation sized up correctly is borne out by Attorney Horace Russell's advice to association Attorney Otto Smith following the Little Rock meeting. Mr. Russell, general counsel for the United States Savings & Loan League and who, as a former general counsel for the Federal Home Loan Bank Board knew Mr. Wyman personally as well as by reputation, wrote Attorney Otto Smith in response to Smith's request for advice as to what the association should do stating in part:

> The case stated is almost identical with a great many others which have come to our attention in the last 2 or 3 years. In nearly all of these cases it appears that the supervisory charges violations of law and regulation over a period of years and finally puts all of them together and charges that the same constitute not only specific violations of law and regulations but also "unsafe and unsound operation." Of course, in my opinion, it is the clear duty of the supervisor and the Federal Home Loan Bank Board to proceed under section 5(d)(1) of the statute on each of these separate charges specifically when the transaction is discovered. By this

means management would be given an opportunity to contest such charges. However, this has customarily not been done.

Under all of the circumstances the only suggestion I can make to you is to do anything that the supervisor suggests. * * *

It is in my opinion impractical for the supervisor to manage all of these associations from Washington. Furthermore, of course, most of what he directs to be done is completely illegal. That is, the law and regulations provide for eligibility of directors and the method of their election, and for the selection of officers and employees. What Mr. Wyman directs is in the teeth of these provisions.

However, if he chooses to seize the association at this time, it is unlikely that a Federal court will reverse the Federal Home Loan Bank Board's adjudication of "unsafe and unsound operation" (hearings, p. 23).

Note that in the cases Attorney Russell refers to "violations of law and regulation over the years" were apparently the principal bases for the findings of unsafe or unsound operation. In the instant case, as heretofore pointed out at page 25, "self-dealing" over a period of years without violation of law or regulation was the purported basis of the determination of unsafe or unsound. In any event, the best advice Attorney Russell could give was that it was better to obey the unlawful orders of Mr. Wyman than run the risk of having the association seized.

## Ammann's Championship of the Little Rock Coup and His Imperviousness to All Evidence Running Counter to His Predilections

Mr. A. V. Ammann, Associate Director, Division of Supervision of the Federal Home Loan Bank Board, was not present at the Little Rock meeting but much of his handiwork was and so was he in spirit.

Whereas Supervisory Agent Oakes was somewhat apologetic in his testimony before the subcommittee for what had happened at the Little Rock meeting and the part he had played therein—not so Mr. Ammann. To him the proceedings there were not coercive but fair and equitable—less drastic than a public hearing (hearings, pp. 158–162). Yet he admitted the "Corrective Action Required" section of the supervisory letter was a demand; that the Bank Board did not have the authority to remove officers of the association; and that there were no legitimate grounds for seizure. Nevertheless, he said, it was not coercion for Mr. Wyman to read and deliver a supervisory letter demanding that the directors of the association commit themselves before leaving the meeting to remove the managing officer and increase the number of directors by four. In short, what Mr. Ammann seems to say, although he contradicted himself several times during his testimony, is that, since the gun (figuratively speaking) which Mr. Wyman used was really not loaded with legal ammunition, it was not coercion. But the directors of the association knew about Mr. Wyman's reputation for using that selfsame weapon to seize solvent associations when his arbitrary demands were not met. Note in this connection excerpts from Horace Russell's letter quoted above and C. Roy Smith's testimony above.

On item after item on which Mr. Ammann was examined, his perspective, logic, and explanations were equally as confounding. For instance when asked by the subcommittee chairman, "Was the association injured by this bringing of directors into a position of possible conflict?" Mr. Ammann answered: "Fortuitously, no—by accident" (hearings, p. 137).

Apparently the testimony of C. Roy Smith, Floyd Bresenham, and Jack M. Stagner which Mr. Ammann had heard had not had an iota of effect upon his thinking. Mr. Smith had testified: (1) That Stagner, Inc., had been formed primarily as a land holding company to sell land to builders and to feed permanent mortgages into the association; and (2) that the association's account with the Stagner Construction Co. had been "a very profitable one" and that the entire board of directors of the association were on record as saying they did "not feel that the funds of the association were at any time jeopardized in the handling of the Stagner account" by reason of the blanket mortgage it had on Stagner's personal property (hearings, pp. 17, 18). Mr. Bresenham had testified (1) that during the period from 1947 through 1956 the association financed Stagner & Sons in a total amount of approximately $10 million, all of which was repaid at 6 percent interest; (2) that Stagner home construction projects were carefully

planned, and were on a long-range outlook. Construction progress was supervised and inspected. In all of the Stagner construction criticized in the supervisory letter, commitments were secured from the FHA, from plans and specifications prior to the start of construction, and in most cases, commitments were secured from both the FHA and the VA. The houses were always sold at the FHA and the VA appraised value; (3) that although the VA's regional office in Albuquerque, N. Mex., terminated the association's automatic guarantee privileges—the VA's regional office in Lubbock, Tex., did not; and (4) that after termination of automatic guarantee, veterans' applications were sent direct to the VA's Albuquerque office for processing and he was sure that the records of the association would show that there were no higher ratio of loan failures between loans made under automatic guarantee and those processed through the VA regional office (hearings, pp. 36–42). Mr. Stagner's testimony corroborated Mr. Smith's and Mr. Bresenham's testimony and he characterized the basic findings in the supervisory letter as being "simply not true" (hearings, pp. 68–72). Nevertheless, to Mr. Ammann the financing of Stagner by the association in the amount of $10 million over a period of 9 years during which Stagner constructed some 2,000 needed houses which turned out to be "very profitable" for the association was all "by accident."

During the course of such a construction program there were bound to be some rough spots such as the the 45-day labor strike which could not be entirely avoided by advanced planning. Mr. Chastain apparently did not make allowances in his examination reports for such incidents. Time after time during his testimony he stated he did not look into local conditions or extenuating circumstances which might account for the association's failure to comply with the letter of the Bank Board regulations regarding the disbursement of loans on the two or three occasions cited. And even though the supervisory officials accepted the overdisbursements of loans reported by Mr. Chastain as being fair and accurate (which seems questionable in the light of Smith's, Bresenham's and Stagner's testimony and Chastain's obvious prejudice against the Stagner operations as revealed by the first paragraph of the confidential section of his 1957 examination report) nevertheless, Supervisory Agent Oakes testified he did not at any time consider the operations of the association "unsafe" (hearings, pp. 119–133). He stated further that when such matters were called to the attention of the directors of the association they cooperated in correcting them.

Mr. Ammann disagreed with Mr. Oakes on both counts and he contended these same transactions became "unsafe" practices when the 1956 and 1957 examination reports showed that officers in the association owned stock in Stagner, Inc. But Mr. Oakes reviewed the 1956 examination report and it did not change his mind. He still considered the operations of the association "a safe operation." Nor did the tenor of his testimony at the hearings, after listening to Mr. Chastain and Mr. Ammann testify, indicate that he thought the 1957 examination contained accurate factual information which would have caused him to change his mind (hearings, pp. 298–339).

The preponderance of the evidence is that the overall Stagner operations, under existing laws and regulations, were legally and prudently conducted in the best interests of the association in accordance with

long-range planning. That some of the officers of the association made a reasonable profit from their stock in Stagner, Inc., which sold lots to the Stagner Construction Co. at reasonable values does not alter that fact. Stagner, Inc., by developing lots for builders proved beneficial (not detrimental) to the association, helping to feed permanent mortgages to it. That there is an inherent danger that officers of an association might use this kind of an arrangement to milk and endanger such institutions for personal gain does not justify the tactics used in this case to conjure up unsupportable charges that they did so—years after the operation had been discontinued. Stated differently, the weight of the evidence supports Mr. Oakes' views, and not Mr. Ammann's predilections.

If "self-dealing" was in fact involved in the transactions objected to by the Bank Board staff in this case, the committee would condemn such practices. But the committee found itself unable to elicit from Bank Board witnesses a meaningful definition as to those practices which could be characterized as "self-dealing." The committee condones no improper practice but it looks to the Bank Board for sufficiently definitive criteria, spelled out as contemplated and authorized by law,[1] to place management on notice when participation in such transactions is prohibited.

[1] Sec. 5(a) of the Home Owners' Loan Act of 1933, as amended (12 U.S.C. 1464(a)) provides: "In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board (Federal Home Loan Bank Board) is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operations, and regulation of associations to be known as Federal savings and loan associations * * *."

## Creighton's Defense of the Little Rock Procedure and his Legal Opinion Re the Hereford Operation

### I. PROCEDURE

Mr. Thomas H. Creighton, Jr., General Counsel, Federal Home Loan Bank Board did not personally take part in the preparation of the Clovis case for presentation to the Bank Board. Nor did he appear with Wyman before the Board. Nor did he help draft or even see the supervisory letter (hearings, pp. 354, 355).

Mr. Creighton testified further that Mr. Wyman could not declare a forfeiture of the rights of officers of an association to continue to hold office therein (hearings, pp. 374, 375). When asked by Congressman Neal Smith why the cease and desist order approach was not used in this case instead of the forfeiture of the right to hold office approach, Mr. Creighton replied:

> Well, now, I cannot answer that question, because I did not prepare this letter. I was not in on the preparation of it; and I do not know; I cannot read the minds of the people who prepared this letter, and the reasons.
>
> Mr. Neal Smith. In truth and in fact, there are really no rules or any instructions in writing that would help to delineate in this case which approach should be used, is there?
>
> Mr. Creighton. No. I think that it usually depends upon what is believed to be based upon the facts of the individual case which approach is believed to be better by the Board.
>
> I am sure that in cases of this sort, generally speaking, that Mr. Wyman does not go and request this, I use "request," Mr. Chairman, the chairman says, "demand or require such action," without first consulting with the Board and getting their authorization to do it (hearings, p. 380).

Supervisory Agent Oakes apparently assumed the supervisory letter had had legal clearance when he signed it. His testimony indicates he would not have originated "any such action" without consulting legal counsel (hearings, p. 320).

That supervisory action as serious and drastic as that taken at Little Rock was taken without review of the evidence, the charges, and the findings by the General Counsel's Office seems incredible. Surely it was a matter warranting legal clearance. Since violations of legal duties not defined by statute or regulations were alleged—such as "self-dealing" and other "violations of fiduciary duties"—it would seem clear that the opinion of the General Counsel should have been obtained as to whether or not, under the facts of the case, there was legal precedent in point established by court decisions to justify the charges and the proposed action.

What is equally as incredible and shocking is that a lawyer of Mr. Creighton's standing placed his stamp of approval upon the procedures used at Little Rock. When asked by the Subcommittee Chairman—

> As an attorney, Mr. Creighton, would you place your stamp of approval upon the procedures used in the May 21 meeting in Little Rock?
>
> * * * * *
>
> * * * does it meet reasonable requirements of an opportunity to discuss freely and in an amicable or constructive atmosphere the problems of the association?

Mr. Creighton replied:

> Mr. Moss, my only basis for putting my stamp of approval upon this is this: That none of these people there raised any question of propriety or made any denial whatsoever with respect to the charges made in this letter.
>
> Now then, I certainly can't conceive of a man practically admitting these things, and signing it, unless there was some basis in fact for them. I am not saying that there was; I just can't conceive of a man doing that (hearings, p. 361).

Mr. Creighton adhered to this theme throughout his testimony. To him it was the duty of the directors to challenge the "charges" and their failure to do so, their silence, could therefore be properly construed as admission of the charges.

At the Little Rock meeting, however, the so-called charges were more than mere charges. They were finalized findings of fact and conclusions of law contained in an official administrative determination and mandate prepared in the form of a letter which had been duly executed and delivered to the directors. Said letter contained no notice of a right to take exception; a right to ask for an extension of time; the right of an appeal; or the right to a "public hearing." On the contrary the letter insists the directors of the association agree to carry out its mandate at "this meeting." So far as Mr. Wyman is concerned, the record is unquivocally clear that all he ever intended to discuss with the directors were the mandate provisions—their meaning and the means by which "full compliance" was to be effectuated.

Nevertheless, Mr. Creighton testified that, while he considered the supervisory letter to be unfortunately worded in certain respects, he thought that if the directors had stated "your facts are all wrong" the matter would have been "brought back to the Board and considered by the Board." This conjectural hindsight of Mr. Creighton's is not very persuasive in the light of what the directors of the association were facing at Little Rock after having already requested the Bank Board to grant them "the right of a public hearing." Mr. Creighton did not point to any published rules of procedure which gave them a right to an extension of time, or a right to a reconsideration, or a right of appeal from a formal and ostensibly final determination of "unsafe or unsound" operations. As matters stood at Little Rock, it undoubtedly appeared to the directors that they had exhausted their administrative remedies. The alternatives, as testified to by C. Roy Smith, appeared to be to accede to the Star-Chamber-spawned mandate, or seizure of the association. When faced with such alternatives silence is not an admission of guilt. Two of the men, Floyd Bresenham and Jack M.

Stagner, whose characters the supervisory letter impugned, were not even present. General Counsel Creighton's position is, therefore, untenable.

No one has stated the case against the use of the tactics employed by Mr. Wyman at Little Rock better than the former General Counsel for the Federal Home Loan Bank Board, Horace Russell. In a memorandum dated May 8, 1958, to Norman Strunk, executive vice president of the U.S. Savings & Loan League, a copy of which appears as an appendix to this report, Attorney Russell recommended that Strunk try to persuade the Bank Board to stop using the illegal basket of charges technique "to entrap management." Mr. Russell's memorandum contains the following summary paragraph:

> The present procedure which is following a regular pattern of building up a series of charges, one of which generally is a false statement which is in most cases one innocently made, and then demanding wholesale resignations with a threat of immediate seizure is wrong. It is a rank abuse of the administrative process and the power of the Government. Unfortunately the average management under such circumstances, even if the charges are false, is defenseless as a practical matter.

### II. LEGAL OPINION

There was only one charge, one conclusion of law contained in the supervisory letter, that the association was doing anything in violation of rules and regulations. It had nothing to do with the major issue of "self-dealing." The mandatory provisions of the supervisory letter required the directors of the association to—

> Adopt a resolution immediately abolishing the agency at Hereford, Tex., and in all respects terminating its operations and the services of its personnel; this agency is being operated in violation of the rules and regulations and it cannot be permitted to continue (hearings, p. 498; exhibit No. 3).

The ordering of the abolishment of the Hereford "agency" on the ground that it was being operated in violation of rules and regulations without giving the association due notice and 30 days in which to correct the "alleged violation" was itself a violation of section 5(d)(1) of the Home Owners' Loan Act of 1933, as amended (12 U.S.C. 1464(d)(1)). The Hereford operation being a relatively unimportant collateral matter probably accounts for the fact that the association's attorney did not make an issue of the unlawful demand for its abolishment.

When asked at the hearings if he knew what rules and regulations the association's Hereford operation was violating, C. Roy Smith replied, "No sir; I don't."

Mr. Smith went on to explain that Hereford, Tex., is 65 miles from Clovis, N. Mex. (associations at the time were required by law to get special authorizations to make loans in areas beyond 50 miles from their main offices) but that the association had secured authorization to operate in Hereford (hearings, p. 19).

The order dated August 8, 1946, issued by the Federal Savings and Loan Insurance Corporation which authorized the association to make

loans in Hereford in accordance with its application to do so appears as exhibit No. 5, page 20, of the hearings, and it was read into the record at page 164.

Mr. Ammann in his testimony strongly contended that the arrangement the association had at Hereford was an "agency" which performed functions beyond those permitted without formal approval by the Federal Home Loan Bank Board. Mr. Ammann's primary point was that since the Hereford "agency" was taking "loan applications" it violated regulations which were in effect in 1946 and which remain in effect as section 545.15 of the rules and regulations for the Federal savings and loan system (hearings, pp. 163–165, 233–239).

Mr. Oakes admitted he knew the association was operating and making loans at Hereford and that it had never been a matter of supervisory concern (hearings, pp. 162, 163, 312).

C. Roy Smith stated "We didn't consider that we had an agency in Hereford. We had one agent to receive applications. That is all" (hearings, p. 164).

When General Counsel Creighton concurred in Mr. Ammann's views at the hearings, pages 234, 235, Subcommittee Chairman Moss requested that he submit a formal opinion on the question. Mr. Creighton's views regarding the matter were further explored at pages 365–368 of the hearings.

Subsequently, Mr. Wyman's views, which coincided with Mr. Ammann's, were explored at pages 409–412 of the hearings. At the close of Mr. Wyman's testimony on the matter, the subcommittee chairman reiterated his desire to have a legal opinion from Mr. Creighton as to whether the association's representative in Hereford "was authorized to accept applications for loans."

Mr. Creighton submitted his opinion May 25, 1962, and it appears in the appendix of the hearings as exhibit No. 51 at page 621. In his opinion, Mr. Creighton observes that the question of whether the proposed operation in Hereford by the First Federal of Clovis would constitute an agency of a character requiring the approval of the Federal Home Loan Bank Administration was specifically ruled upon by the legal department of said agency on July 31, 1946. The legal department expressed the opinion "that the association's proposed arrangements do not constitute agency operations requiring the approval of the Bank Administration under Federal Regulation 203.16(c)."

Mr. Creighton in his opinion indicates the above opinion is out of line with other official opinions relied on by his office in construing the terms "agents" and "agencies." It is his view that the arrangement in Hereford, technically speaking, did constitute an agency operation requiring formal approval. Since, however, the association operated under the proposed arrangements after legal clearance by the Federal Home Loan Bank Administration (now Federal Home Loan Bank Board) for more than 12 years and 9 months with the knowledge of the Bank Board's supervisory officials of such operations, Mr. Creighton concluded his opinion by stating:

> In view of these circumstances, I believe that First Federal Savings & Loan Association of Clovis had ample cause for believing that its procedure in processing loan applications in Hereford was legally unobjectionable.

In brief, regardless of the nice legal question involved as to whether or not the Hereford operation was an agency which should have been formally approved in the first instance, the officials of the Federal Home Loan Bank Board by their own acts over a period of almost 13 years were legally estopped from censuring or penalizing the association on the ground that it operated said agency in violation of rules and regulations.

Accordingly the unlawful mandate calling for the immediate abolishment of the Hereford agency on the ground that it was being operated in violation of rules and regulations is just one more example of the intemperate, capricious, and unsupportable findings and conclusions that pervade the nine pages of the supervisory letter of May 21, 1959.

## Wyman's Testimony Re Nature of Little Rock Proceedings Versus the Irrefutable Evidence of Record and How He Reached Rapport With Otto Smith

### I. LITTLE ROCK PROCEEDINGS

Mr. John M. Wyman, Director of the Division of Supervision, who personally read and delivered the supervisory letter at the Little Rock meeting May 21, 1959, described the meeting as "calm and friendly throughout." He stated he expressly inquired whether any of the directors—

> had any comment on or exception to anything in the supervisory letter. No exception was taken at the meeting by any director as to any statement made in the May 21, 1959, letter.
>
> There was discussion, however, and question was raised by one or more of the directors as to what would be necessary in order to provide the association with suitable management (hearings, p. 390).

Subsequently, under questioning, Mr. Wyman testified that had he known that the directors had with them at Little Rock written answers to the parts of the 1957 examination report they had received, "the course of action would have been reconsidered, let's say, in the light of that" (hearings, p. 427).

Mr. Wyman's statement that he asked the directors for "any comment on or exception to anything in the supervisory letter" is contradicted by C. Roy Smith who testified, "We weren't asked for any defense," and "our attorney, Otto Smith, did try to defend us, and it didn't do any good."

Nor does Mr. Oakes' testimony fully support Mr. Wyman. Mr. Oakes stated Mr. Wyman after reading the letter "asked for discussion." And what was open for discussion? The supervisory letter and the covering letter attached thereto speak so eloquently for themselves on this point that they leave no room for conjecture. Nothing was left open for discussion except the exact requirements of the mandatory provisions of the supervisory letter—the gist of which appears to have been intentionally and deliberately left ambiguous. Mr. Wyman's delivery of said mandatory provisions in person incorporated with an unappealable determination of "unsafe or unsound" (which was ostensibly the Bank Board's answer to the association's request for a public hearing) served to give additional impact to that point. This completely refutes Mr. Wyman's denial that he used the "sign it or else" approach at the Little Rock meeting (hearings, p. 400).

In the circumstances, as already pointed out, it could be worse than futile to challenge or try to discuss anything other than the meaning of the mandate—the "Corrective Action Required." To do so the directors would be running the risk of incurring the wrath of the magistrates who had already adjudged the accused officers

guilty but who had not yet fully spelled out the measure of their punishment or exactly what was in store for the association. The directors knew, of course, insofar as Mr. Wyman was concerned, that they were dealing with an official who had the reputation for imposing his will upon associations and even on occasion having them seized when his highhanded demands were not met. But the vicious bark of the supervisory letter might prove worse than its relatively innocuous-looking bite if they went along with it. Besides C. Roy Smith thought he had a friend in court in the person of Mr. Oakes who had voluntarily given him assurances shortly before the meeting that everything was going to be all right. So they signed the letter of compliance before asking any serious questions.

When questioned, Mr. Wyman soon came right to the point and dictated the addendum to the mandatory provisions of the supervisory letter requiring—

> the employment of a new managing officer * * *; and an increase in the number of directors from 7 to at least 11 * * * each of which persons, including the new managing officer, shall have been found acceptable by and to the supervisory agent prior to his appointment or election.

After a few preliminary protests against this drastic addendum, it appears the association's attorney, Otto Smith, must have sized up Mr. Wyman and the overall situation and decided it would be unwise to challenge the legality of the proceedings or the propriety of the adjudication of guilt. It should not be overlooked in this connection, however, that as drastic as the addendum was it did not affect Otto Smith's status as attorney for the association or as a director.

Mr. Wyman's own testimony at the hearings attests to the accuracy of attorney Otto Smith's judgment. For instance, Mr. Wyman testified after all the evidence was in the record concerning the alleged "self-dealing" and other acts of malfeasance on the part of the accused officers and the "irresponsibility of builder Stagner," except his own, that—

> Up to this moment, I have neither seen nor heard anything which modifies the real substance or significance of the facts and information reported to us by the Board's examiners as a result of their examinations of the Clovis association; and I know of nothing on which I could in good faith recommend to the Board any materially different course of action than that which the Board took (hearings, p. 405).

The testimony in the record at the time clearly showed that the 1957 examination report and other documents upon which Mr. Wyman had purportedly relied did not contain sufficient reliable and accurate information—competent evidence—to support a single material finding of fact or conclusion of law contained in the supervisory letter. Moreover, the information they did contain was obsolete on its face for the purpose of sustaining the crucial finding in 1959 that "the operation of the association, as shown by the examination of September 3, 1957, continues to be unsafe or unsound, and its lending practices have been and are definitely related to, and have been a part of, a misuse of official position for personal gain." That there was no evidence to support this basic finding in 1959 that the operation "continues to be unsafe or unsound" because of "a misuse of official

position for personal gain," is made abundantly clear by the following finding on page 2 of the supervisory letter itself which states:

> The unsound practices in the financing of Stagner construction and sales did not come to a close until, in 1956, the increasing scope of supervisory and examining investigation (and the VA investigation) made it evident that such practices, and the conflicting personal interests of the association's management, were on the verge of discovery.

This finding that the Stagner operations (the only "self-dealing" operation the accused officers were charged with) came to a close in 1956 leaves no basis for the finding in 1959 that the managing officers of the association were continuing to endanger the association by "self-dealing." Stated differently, Mr. Wyman's finding on page 2 of his supervisory letter cancels out his basic finding on page 1.

So perhaps Mr. Wyman's seeming indifference to the multiple inaccuracies brought out at the hearings with respect to the 1957 examination report and the other sources of information he purportedly relied upon can be accounted for because he realized he didn't have any competent evidence in the first place to support a finding in 1959 that the operation of the association continued to be unsafe or unsound by reason of "self-dealing." In the final analysis his position seemed to be that the fact that the management officers once owned stock in Stagner, Inc., and Stagner, Inc., sold most of its lots to Stagner & Sons who borrowed money from the association was sufficient justification for him to force their removal from office 3 years after the operation had been terminated. They had "forfeited" their rights to hold office. His attitude appeared to be that it really did not matter that the alleged facts and charges were shown to be distorted or that he had to go beyond the law and the specific instructions he had received from the Bank Board to achieve his purpose. The end he sought—exemplary ex post facto punishment—justified the means he used regardless of what Congressmen and lawyers (including General Counsel Creighton of the Bank Board) might say about the lack of competent evidence and the lack of legal authority. To have issued a stop order as suggested by Congressman Neal Smith, to have simply requested the management officers of the association whom Mr. Oakes characterized as "most cooperative" not to renew the so-called self-dealing of bygone years, was, in Mr. Wyman's judgment, too good for officers who (by the rules of evidence prevailing in Wyman's Star Chamber) had sinned against his personal undefined and unprescribed dogma concerning "self-dealing."

### II. RAPPORT WITH OTTO SMITH

Mr. Wyman's testimony regarding the rapport he reached with Attorney Otto Smith at the Little Rock meeting is astounding. In this connection it should be remembered that it was Otto Smith, attorney and director of the association, who perfected the corporate structure of Stagner, Inc., and that he and his law partner subscribed to one-fourth of the stock therein; that it was his law firm which advised the association it was adequately protected in making the alleged overdisbursements of loans to Stagner Construction Co. by reason of the blanket mortgage it had on Stagner's personal assets; and, finally, that it was probably Smith's fault, as attorney for both the association and Stagner, Inc., if there was a censurable delay in the

execution and recording of the two or three deeds from Stagner, Inc., to Stagner Construction Co., which Mr. Chastain disinterred during his 1957 examination.

Nevertheless, Mr. Wyman not only permitted Otto Smith to remain on as attorney and director of the association but he approved of his acting in the capacity of attorney for the committee of five directors Wyman put in charge of reorganizing the association. Of the seven association directors, therefore, only C. Roy Smith was left without a voice or a vote in the reorganization setup.

Mr. Wyman gave the following explanation for changing his views regarding Otto Smith who is now deceased:

> Well, Mr. Otto Smith told me that he had been approached in connection with the establishment of this corporation, and that he raised the question as to whether or not through this corporation or by virtue of it there might be relationships established which would be improper for persons who were directors or officers of the association to have. And that he was assured that nothing of that sort would occur. And that he relied on the facts, the information, the statements which were made to him about those matters.
>
> And having satisfied himself on it, he proceeded, and on that basis, he proceeded to perfect the corporate structure.
>
> Now, that is the substance of what he said to me. I have no way to verify that. I believe he was telling the truth. It impressed me that he was telling the truth. And in addition to that, we did not ask any director of this association to resign as a director. We did not do that (hearings, p. 455).

So it appears that Attorney Otto Smith in his plea for mercy, as heard by Mr. Wyman, not only abandoned the cause of his lay associates but blamed them for leading him astray on a question of law, a possible conflict-of-interest situation. Is it possible that Attorney Smith's remarks were influenced from having heard Mr. Wyman read the exaggerated "personal gains" figures from the supervisory letter? Did those inflated figures make him suspicious that his associates in Stagner, Inc., had shortchanged him? In any event, Attorney Smith's plea went to Mr. Wyman's heart and he forgave the pleader personally on the spot, but there was to be no forgiveness without punishment for his "self-dealing" associates who, as Mr. Wyman adjudged the matter, had led this naive lawyer astray.

When Mr. Wyman approved of Otto Smith acting as attorney for the five-man committee, he put him in a position to see to it that the association would be so reorganized that the interests of Otto Smith and his law firm would be fully protected. In short, Mr. Wyman put him into a conflict-of-interest situation from which he was almost certain to come out unscathed personally—he might even better his position. And since Mr. Wyman had maneuvered C. Roy Smith into an apparently hopeless position by his unappealable adjudication of "unsafe or unsound" operation, why should Otto Smith unnecessarily jeopardize his personal interests by continuing to challenge the legal propriety of the decree? It should be remembered in this connection that no lawyer had found (nor has one yet found) a feasible means of challenging such a determination by Mr. Wyman, however arbitrary, capricious, and unreasonable it might appear to be.

## Blacklisting of C. Roy Smith

It was agreed and understood at the Little Rock meeting that, although C. Roy Smith would have to resign as president and managing officer of the association, he could remain on the association's board of directors. Both Mr. Oakes and Mr. Wyman testified that this was so and that they also agreed they would not object to his being made chairman of the board. Their testimony on this point squarely contradicted the position officially taken by Ira Dixon, member of the Federal Home Loan Bank Board, in his letter to Senator Chavez dated July 28, 1960. Said letter states in part:

> I am informed * * * there was no agreement that Mr. Smith would or should continue as a director. On the contrary, the Board's supervisory agent stated the view to the committee that in the best interests of the association and of its new managing officer, Mr. Smith should resign as a director (hearings, p. 26; exhibit No. 8A).

C. Roy Smith in a letter to Senator Chavez dated August 3, 1960, sharply disputed the accuracy of a substantial part of the Dixon letter of July 28, 1960. Among other things Mr. Smith made it clear that he believed that he had been betrayed by Mr. Wyman and Mr. Oakes not once but twice. First, as to the acceptance of the supervisory letter he stated:

> The letter did not require a new managing officer * * * the addendum requiring a new managing officer was added by Mr. Wyman after we had signed the acceptance (hearings, p. 28; exhibit No. 9).

Mr. Oakes' testimony corroborates Mr. Smith on this point. Under close questioning as to when it was determined "management would have to change," Mr. Oakes admitted, "I am not certain it was determined before the meeting convened" (hearings, p. 306).

Mr. Oakes testified further:

> Mr. Glick. At the time this letter was signed and before the addendum was attached, was it clear that Mr. Smith would no longer be the managing officer?
>
> Mr. Oakes. It was not clear to some member of the board. Mr. Otto Smith, I think, is the one that raised the question.
>
> Mr. Glick. And who made that decision that he would not or was not to remain as managing officer?
>
> Mr. Oakes. Well, the decision was made then and there. I don't——
>
> Mr. Glick. Certainly the board of the association didn't make it.
>
> They were there to adhere to whatever was told them.

Mr. OAKES. Well, the decision was made between Mr. Wyman and myself and the board agreed to it. Put it that way.

I don't remember the exact way——

Mr. MOSS. Who dictated the addendum?

Mr. OAKES. I think the addendum was dictated by Mr. Wyman to my secretary.

Mr. MOSS. After you returned from having coffee or prior?

Mr. OAKES. It was after, I think.

Mr. MOSS. All right.

Mr. GLICK. Then Wyman, on the spot, decided that there should be a new managing officer?

Mr. OAKES. With my agreement or concurrence (hearings, pp. 314, 315; see also p. 322).

As to the second betrayal cited in Mr. Smith's August 3, 1960, letter—the forcing of Mr. Smith off the association's board of directors by the "veiled threat of seizure and ruin," Mr. Oakes and Mr. Wyman tried to avoid in their testimony taking the responsibility for this. The written record contradicts their testimony and two separate interviews by the subcommittee staff of Mr. Ballew, chairman of the five-man reorganization committee, and Clyde Rayl, who was president of the association at the time Mr. Smith was blackballed, and one interview with Directors Rodes and Spaulding failed to develop any information inconsistent with the written record or with Mr. Smith's letter of August 3, 1960, to Senator Chavez.

Supervisory Agent Oakes wrote a letter July 27, 1959, to N. W. Ballew, chairman of the five-man committee, in which he stated in part:

> The report of your committee transmitted at an earlier date and my conference with you and Mr. Rayl on July 17 have both been discussed with the Director of the Division of Supervision for the Federal Home Loan Bank Board.
>
> * * * * *
>
> After giving long and careful consideration to the matter, it is our conclusion that for the best interest of the association and the newly elected president and managing officer that Mr. C. Roy Smith should resign as a member of the board.
>
> In order that we may be in a position to close our docket on the matter, we should appreciate your advising us promptly after all of the requested changes have been effected (hearings, p. 24; exhibit No. 6).

Although Mr. Oakes frankly conceded several times during his testimony that he should not have written the letter, he maintained that the suggestion that C. Roy Smith resign originated with the five-man committee. However, the committee report (June 29 minutes, hearings, p. 333), to which his letter referred contained among the resolutions adopted by the committee a resolution "that C. Roy Smith be retained as director and as chairman of the board." Nevertheless, Mr. Oakes insisted he wrote the July 27, 1959, letter at someone's oral request—to support the five-man committee in doing what the committee itself had decided was best for the association. Who made the

request—whether it was Chairman Ballew of said committee; or Clyde Rayl, the designated new president and managing officer; or Otto Smith, the attorney for the five-man committee—he could not be sure. He had had telephone conversations with all of them (hearings, pp. 333, 334). Even if one were to believe that one or more of these three men may have covertly called Mr. Oakes, this would not relieve him from the responsibility for the letter, its contents, and its consequences nor from the impropriety of having engaged in a conspiracy far beyond the authority of the Bank Board and its instructions to supervision.

The recorded official actions of the five-man committee clearly show that the Oakes letter of July 27, 1959, was regarded as a directive to the committee to effect C. Roy Smith's removal from the association's board of directors at the earliest opportunity. On the face of the record it was treated as a supplement to the "Corrective Action Required" provisions of the supervisory letter by both supervision and the five-man committee—a condition which would have to be met to complete the reorganization of the association (hearings, pp. 23–31, 333–339).

While the wording of the letter of July 27, 1959, indicates it was written with Mr. Wyman's concurrence, Mr. Oakes maintained that Mr. Wyman had nothing to do with the writing of the letter. But a copy of the letter in the committee's files shows that it was received by Mr. Wyman July 28, 1959, and it bears Mr. Wyman's initialed "OK" on the margin.

Mr. Wyman in his testimony refused to concede that the letter was an improper interference in the internal affairs of the association. He tried doggedly but unpersuasively to maintain the position he had taken in preparing the Ira Dixon letter of August 24, 1960, to Senator Chavez (hearings, pp. 397, 398; exhibit No. 8C, p. 27), that he and Mr. Oakes had neither repudiated their Little Rock agreement with Mr. Smith nor were they responsible for his being blacklisted. They had merely concurred in what the directors of the association themselves wanted to do. Under close questioning by Chairman Moss, he did finally admit the letter was unfortunately worded for the purpose it was intended to serve. The fact is the letter is so patently an official directive on its face that it is not possible to construe it otherwise (hearings, pp. 458–463).

Although C. Roy Smith refused to resign following the receipt of the Oakes letter of July 27, 1959, it was used as the justification for getting him off the board the following January. Mr. Smith testified: "Our committee on reorganization and board of directors were given to understand my name was not to be allowed to come up for reelection" (hearings, p. 25). Mr. Smith then read into the record an excerpt from the minutes of the reorganization committee meeting of October 29, 1959. The final paragraph of said minutes reads:

> This committee, after discussing for some time whether C. Roy Smith would qualify for reelection as a director, decided he should be called into the meeting to state his thinking on the matter. He made the same statement as he had before; that he is elected by the members of the association and that he should be considered for renomination in January 1960, for director, that he was told by the supervisory agents, he could continue to serve as director. It was very clearly pointed out to Mr. Smith the position later taken

> by the supervisory agents, in which it was stated he should resign as a board member. Mr. Smith was informed that he would be considered for the renomination provided: he contact the supervisory agents, before appointment of the nominating committee, having them advise the "Special 5 man committee from the board" that he would qualify for reelection (hearings, p. 541; exhibit No. 7A).

Mr. Smith did not personally "contact the supervisory agents" but a copy of the October 29, 1959, minutes was sent to Supervisory Agent Oakes by a covering letter dated November 3, 1959 (hearings, p. 25).

Copies of the letter and the minutes were found in and obtained from Mr. Oakes' file but no copy of a reply thereto by Mr. Oakes was found (hearings, pp. 338, 339). Accordingly, Mr. Smith was not considered as being qualified for nomination, and the nominating committee did not submit his name to the members of the association at the annual meeting of the members held January 20, 1960. A copy of the minutes of said annual meeting which shows that the number of directors was increased from 7 to 11 and that Scott McGhee was elected in place of C. Roy Smith was sent by Supervisory Agent Oakes to Mr. Wyman February 5, 1960. Mr. Oakes' transmittal letter (a copy of which is retained in the subcommittee files) states—

> in my judgment the action taken by the members at this meeting now completes compliance with all of the requirements made of the association at the time of our meeting with the directors in this office in May of last year.

Thus was the blacklisting of C. Roy Smith finally effected.

## Blacklisting of Floyd Bresenham and Jack M. Stagner

Following his discharge from his position as vice president of the First Federal Savings & Loan Association of Clovis in 1959, Floyd Bresenham organized the State Savings & Loan Association of Clovis, N. Mex. This was a capital stock savings and loan association organized in accordance with the laws of the State of New Mexico which sought insurance of its savings accounts from the Federal Savings and Loan Insurance Corporation.

Before perfecting the organization of the State Savings & Loan Association, Mr. Bresenham testified he contacted Mr. Ennis M. Oakes, president of the Federal Home Loan Bank of Little Rock, and briefly outlined a plan of organization and the economic condition of Clovis and surrounding areas. Mr. Bresenham stated that he asked Mr. Oakes' opinion regarding the insuring of accounts of such association with Bresenham as manager and that Mr. Oakes advised him that he felt the town would justify another association (hearings, p. 50).

State Savings & Loan Association was then duly organized with Wesley Quinn as chairman of the board of directors and Floyd Bresenham as president and manager. On May 3, 1961, said association secured a charter from the State banking department and the Corporation Commission of the State of New Mexico. The association then made application for membership in the Federal Home Loan Bank of Little Rock, Ark., and for insurance of its accounts by the Federal Savings and Loan Insurance Corporation, Washington, D.C. Mr. J. W. McDuffee, a vice president of the Federal Home Loan Bank of Little Rock, then made a field survey of the merits of the applications at Clovis on June 21, 1961.

On July 20, 1961, the officers of the newly formed association received a telephone call from Mr. Maurice Matthews, acting State bank examiner for the State of New Mexico, advising them that he had received word from the Federal Home Loan Bank of Little Rock that their application was being forwarded to the Federal Home Loan Bank Board in Washington with an unfavorable recommendation.

Mr. Bresenham and the association's attorney went to Santa Fe to talk to Mr. Matthews. Bresenham testified:

> He (Matthews) called Mr. McDuffee in Little Rock and asked him to explain to me the reason for the unfavorable report on the application of the State Savings & Loan Association. Mr. Matthews then informed me that Mr. McDuffee would not talk to me but that he would explain the situation to Mr. Stockley, an attorney with the State banking department who was in another room in the office.
>
> About 20 minutes later Mr. Stockley came into the office where we were waiting and told us that I was not acceptable as president and manager and that there was some question as to the need of another association in Clovis.

Mr. Bresenham testified further that Mr. Quinn, chairman of the board of directors of the association, then got in touch with Mr. McDuffee—

> and was advised that if he would come to Little Rock alone that something might be worked out.
>
> Mr. Quinn made the trip to Little Rock and upon his return told me that the application for insurance of accounts of the State Savings & Loan Association was a dead issue unless I resigned as president, manager, and from the board of directors. I submitted my resignation to the association, and the board of directors adopted a resolution accepting my resignation and forwarded this resolution to the home loan bank.
>
> An additional resolution stating that Floyd Bresenham would not have any official position with the association as long as the Federal Savings and Loan Insurance Corporation insurance was in effect was also submitted at the request of Little Rock.
>
> Mr. Quinn carried a power of attorney to act in my behalf to the Little Rock office in July of 1961 and was told that he could not see records concerning my status nor any charges against me.
>
> On September 21, 1961, the home loan bank notified Mr. Quinn by letter that the application of the State Savings & Loan Association had been forwarded to the home loan bank in Washington with a favorable report for the issuance of insurance as the result of a board meeting held September 15, 1961, in Albuquerque, N. Mex.
>
> As the matter now stands, I cannot even be a part of the State Savings & Loan Association which I helped to form. I have attempted to regain my position at the First Federal Savings & Loan Association without success.
>
> Presently I am unemployed. And I feel that I cannot secure any type of employment in the field I know, that of the savings and loan.

Mr. Oakes testified that if Mr. Bresenham's testimony was true Vice President McDuffee had, unbeknown to Oakes, violated a procedural directive by not sending the application forward to the Federal Home Loan Bank Board in Washington with an unfavorable recommendation. It was, according to Oakes, contrary to established procedures for an official of the Little Rock bank to tell an applicant association that its application was being forwarded to Washington with an unfavorable recommendation or a favorable recommendation (hearings, pp. 340, 347).

Said established procedure appears to have been disregarded twice in this case. True it was the State banking department of New Mexico who informed the association officials July 21, 1961, of the impending unfavorable recommendation but it was not indicated that the State officials were advised to keep the information confidential.

The alleged established procedure was ignored a second time when Vice President H. B. Proctor of the Little Rock bank wrote the letter dated September 21, 1961, to Attorney Wesley Quinn advising of the favorable recommendation to Washington after the association had

furnished the resolution committing itself not to allow Floyd Bresenham to hold an official position in the association so long as it was insured with the Federal Savings and Loan Insurance Corporation.

Mr. Oakes testified further that he was not in Little Rock when Mr. Quinn visited there in July 1961, but that he understood from Vice President McDuffee that Mr. Quinn by sheer coincidence happened to call Mr. McDuffee before the unfavorable recommendation was transmitted to Washington and asked that it be held up; that Quinn requested this because—

> he had made a personal investigation of Mr. Bresenham, and found that he had made him misrepresentations, and that he was not acceptable to their group.

As in the case of forcing C. Roy Smith off the board of directors of First Federal of Clovis, the blacklisting of Bresenham was handled by unrecorded telephone calls and unrecorded conversations behind Bresenham's back. Nothing was found by the subcommittee staff in the Little Rock bank files concerning Mr. Quinn's July 1961 visit, or what prompted the actions taken by the State Savings & Loan Association following that visit. In other words, without even letting him know what the charges were against him, if any, typical blackmail techniques were used to effect the blacklisting of Floyd Bresenham.

Mr. Oakes' conjecture that the Federal Home Loan Bank Board might not have blacklisted Bresenham had the application for insurance been forwarded to it with an unfavorable recommendation is, of course, academic insofar as Bresenham is concerned. Moreover, from the weight of the evidence adduced at the hearings, such a possibility appears to have been extremely remote.

The record shows that both the Federal Savings and Loan Insurance Corporation and the Federal Home Loan Bank Board ratified the blacklisting of Bresenham without any question being raised regarding the procedure followed or any concern being shown regarding the blacklisting When asked if there was not a resolution passed by the State Savings & Loan Association of Clovis stating that so long as said association was insured, Mr. Bresenham would never be an officer in the association, Mr. Greenwood, Assistant Director of the Underwriting Division, Federal Savings and Loan Insurance Corporation, answered, "I do not recall. We never made a requirement like that. If it is there, it is there" (hearings, pp. 484, 485).

Mr. Oakes conceded that "when Mr. Bresenham's resignation was obtained, he automatically, you might say, became blacklisted" (hearings, p. 351). He also admitted the only reason for an unfavorable recommendation on the newly organized association's application for insurance was the presence of Bresenham "as the managing officer." He further acknowledged that the unfavorable recommendation was based on the information contained in the 1957 examination report, the supervisory letter, and "the fact that the directors of the institution had seen fit to ask for Bresenham's resignation" (hearings, pp. 350, 351). He stated, "I know of nothing else unfavorable."

The point Mr. Oakes stressed in his testimony was that the Federal Home Loan Bank Board which has the responsibility for making the final decision on applications for insurance sometimes acts contrary to the recommendations of the Little Rock bank and sometimes it holds hearings on such applications.

Fortunately, however, we have a basis in this case for determining what the likely result would have been had the unfavorable recommendation been submitted. When the officials of the Federal Savings and Loan Insurance Corporation saw the name Johnny Stagner listed among the stockholders of the new association, they immediately made telephonic inquiry to find out if by any chance he might be Jack Stagner or if Johnny Stagner of the new association had been connected with the Stagner firm whose dealings with First Federal of Clovis had been condemned by the Wyman-Oakes supervisory letter of May 21, 1959. Attorney Quinn, chairman, board of directors of the new association, answering the inquiry with a letter denunciatory of Jack M. Stagner, stating that all business relationships between him and his brother, Johnny, the stockholder in State Savings & Loan, had been severed in 1953. He concluded the letter with the statement:

> Jack Stagner does not at this time have any interest, directly or indirectly, in State Savings & Loan, and I cannot imagine any way that he can acquire any interest (hearings, p. 76; exhibit No. 15).

Officials of the Federal Savings and Loan Insurance Corporation testified that had Jack M. Stagner been a director in the new State association they would have recommended to their superior that the conditional commitment to insure the accounts of the institution be made subject to the removal of Jack M. Stagner as a director (hearings, p. 482). In brief, the supervisory file of the First Federal of Clovis on its face is regarded as automatically calling for the blacklisting of both Floyd Bresenham and Jack M. Stagner insofar as their ever becoming officers of insured savings and loan associations is concerned.

How do they go about getting off the blacklist? Dr. Husband, General Manager, Federal Savings and Loan Insurance Corporation, testified that he keeps an open mind on such things and that the term "blacklist" is "repulsive" to him. And even Mr. Wyman, as shown in the case of Otto Smith, is susceptible to pleas for mercy. But should Mr. Bresenham and Mr. Stagner have to beg for mercy? They seek redress for an injustice done to them through Star Chamber proceedings conducted behind their backs. What would a hearing granted by the Federal Home Loan Bank Board with its present top staff advisers accomplish in this direction? For that matter what would have been accomplished by a hearing on the unfavorable recommendation on State Savings & Loan Association based solely on Bresenham's presence as an officer which Mr. Oakes insisted should have been submitted to the Bank Board? At such a hearing Mr. Bresenham would undoubtedly have been met by Chief Counsel Creighton's argument that, since no exception was taken to the supervisory letter at the Little Rock meeting, its adjudication of guilt must be true.

How the matter would have been handled at the Washington level can be further judged by what happened when C. Roy Smith's protest against his blacklisting reached the Bank Board. The Bank Board's first answer, the letter to Senator Chavez dated July 28, 1960 signed by Board Member Ira Dixon (hearings, p. 26; exhibit No. 8A) would have the reader believe the action taken by the Bank Board's super-

visory officials in this case was the epitome of propriety and fairness which really had nothing to do with Mr. Smith's blacklisting. The penultimate paragraph of the letter piously states that—

> We were informed in February of this year that Mr. Smith, whose term as a director expired in January, was not nominated and was not reelected at the January annual meeting of the members, who in the final analysis determine who shall be a director. We took no part in that meeting * * *.

In replying to the Dixon letter of July 28, 1960, Mr. Smith charged that Mr. Dixon had been "grossly misinformed," and gave specific reasons for making the charge. He stated further that the Bank Board's supervisory agent had made a "veiled threat of seizure and ruin" if Smith's "name was allowed to come before the shareholders for reelection." Mr. Smith closed the letter with the charge, "It is our belief that the actions of the Federal Home Loan Bank Board and its employees was uncalled for and is entirely unlawful" (hearings, p. 28; exhibit No. 9).

And what did the Bank Board do when it received Mr. Smith's letter containing these serious charges? They merely turned it over to Mr. Wyman to prepare a self-serving answer (hearings, pp. 397–398). The Wyman-drafted reply, the Ira Dixon letter dated August 24, 1960 (hearings, p. 27; exhibit 8C), was a mishmash of evasions, doubletalk, and misrepresentation which afforded Mr. Smith no redress whatsoever.

The fact is there is no remedy for those who are defamed by Mr. Wyman's despotic edicts. Such pronouncements being official acts, he is virtually immune from accountability in suits for libel. As for getting off the Bank Board's blacklist, the only chance Mr. Smith, Mr. Bresenham, and Mr. Stagner ever had of doing so—so long as the Wyman regime was left to its own devices with the diabolical supervisory letter of May 21, 1959, and its source documents remaining unrepudiated in the Bank Board's files—was through a plea for mercy and Mr. Wyman's forgiveness or his determination that they had been sufficiently punished.

## Findings and Conclusions

1. This case demonstrates strikingly the irreparable mischief that can and does arise from the Federal Home Loan Bank Board's informal and illegal methods of operation. The committee believes that the overall conduct of the Federal Home Loan Bank Board in the processing of this case to be one of the most inexcusable administrative performances that has ever come to its attention. This is particularly true in light of the fact that the association requested a public hearing under the law (12 U.S.C. 1464(d)(1)) of any charges to be made against it and it was assured by Chairman Albert J. Robertson of the Bank Board that any action taken "will be in accordance with applicable law and regulation." The action taken mocked Robertson's promise.

2. Basic principles of American law and justice were violated and flouted by the improper supervisory techniques and tactics arbitrarily and capriciously employed throughout the processing of this case by the Wyman-dominated staff of the Federal Home Loan Bank Board.

3. The Wyman summary of the suspicions voiced and the charges made in the incomplete 1956 Veteran's Administration's investigative report did not constitute competent evidence. Its use after it became entirely obsolete as "facts" in the supervisory letter of May 21, 1959, as a major basis for his determination that the association was then being operated in an "unsafe or unsound" manner was capricious.

For the reasons stated in findings Nos. 3 to 6, inclusive, the committee believes that Mr. Wyman's use of his obsolete summary of the VA investigative report as "facts" upon which he, as the Director of the Division of Supervision for the Federal Home Loan Bank Board, based drastic supervisory action, was irresponsible.

4. By 1959 the credit practices of the association which were purportedly the grounds for VA's termination of automatic guarantee privileges of the association in New Mexico (while allowing them to remain in effect in Texas) had been tightened up to the point that the association's slow loans were negligible—much below the ninth district average (hearings, p. 477).

5. VA did not cite (see hearings, p. 64) substandard construction as one of the "grounds" for the termination of the association's automatic guarantee privileges as stated in Mr. Wyman's summary of its report. Moreover, the Bank Board's own examiner, Mr. Chastain, had never reported Stagner's construction as being substandard (hearings, pp. 106, 107).

6. VA did not cite (see hearings, p. 64) as one of the "grounds" for termination of the association's automatic guarantee privileges (as stated by Mr. Wyman) that "association officials were believed to have personal interests in construction and sales" (hearings, p. 492; exhibit 3). Moreover, there was not a scintilla of evidence in any of the documents cited by Mr. Wyman in his supervisory letter, including the VA report, that any official of the association owned stock in Stagner & Sons, Inc., the building corporation financed by the association.

7. Federal Home Loan Bank Board Examiner H. H. Chastain used arrogant tactics in his conduct of the 1956 special examination of the association which were uncalled for.

8. The supplemental examination and audit of the association dated September 3, 1957, indicates on its face that Mr. Chastain tailored and slanted the report to portray President C. Roy Smith and Vice President Floyd Bresenham as misusing their association offices for personal gain and for other acts of malfeasance. Viewed as charitably as possible, the irresponsible manner in which Mr. Chastain reported the $400 transactions; the Engler operation; and the amount of "personal gains" demonstrate his lack of objectivity and accuracy as an examiner.

9. The acceptance by the Wyman-Ammann headed Division of Supervision of Mr. Chastain's 1957 examination report as evidence for use in preparing substantively inaccurate digests relating to the alleged misdeeds of officers of the association in order to induce the Federal Home Loan Bank Board to authorize drastic supervisory action was inexcusable. The Chastain report showed on its face that much of the information it contained was not credible evidence. For instance, there were prima facie inconsistencies and errors regarding the unverified $400 transactions; there were the oral confessions attributed to Bresenham instead of signed statements notwithstanding the fact that Mr. Chastain had been officially and specifically instructed to get statements concerning such matters in writing; and there were the unsubstantiated figures purportedly showing the "personal gains" received by association officers from the Stagner operations.

10. That the digesters knowingly presented distorted facts and unsupportable charges to the Bank Board to lead it into authorizing the supervisory action desired by the staff against the accused officers of the association is evidenced by the fact that four of the most serious charges contained in the digests were omitted from the supervisory letter. These charges if true would have established a case of misuse of office for personal gains and other acts of malfeasance. The logical conclusion to be drawn from this tactic is that the digesters suspected that if such serious and unsupportable findings were delivered to the directors of the association, as part of the supervisory letter, the association directors would revolt and refute the distorted supervisory letter even at the risk of seizure.

11. The supervisory letter was a skillfully drafted ultimatum combining an unappealable determination of "unsafe or unsound" with a mandate (neither authorized by law nor prescribed by the Bank Board) to the directors of the association requiring them to effectuate the reorganization of the association to suit Mr. Wyman's personal whims. To comply meant that the directors would have to ignore applicable laws regarding the election of directors and selection of officers. The mandate also provided for a committee of five directors (notwithstanding clear and specific direction of the Bank Board that such committee consist of three directors) which Mr. Wyman handpicked to act as his deputies in carrying out his dictated reorganization.

12. The deftness with which Mr. Wyman perverted the instructions he received from the Bank Board and flouted applicable procedural laws and customs in the careful planning and the setting up of the Little Rock meeting with the directors of the association so as to give

the delivery of his extralegal ultimatum the maximum impact can be characterized as nothing less than a masterpiece of bureaucratic strategy.

13. The documents Mr. Wyman purportedly relied on in preparing his supervisory letter did not contain sufficient reliable and accurate information—competent evidence—to support a single material finding of fact or conclusion of law contained in the supervisory letter. Moreover, the information they did contain was obsolete on its face for the purpose of sustaining the basic finding in 1959, that the operation of the association "continue to be unsafe or unsound" because of "a misuse of official position for personal gain." The supervisory letter itself contains the finding on page 2 that the Stagner operations, the only operations from which the accused officers allegedly received improper personal gains, had ceased in 1956.

14. A striking example of the capricious and malicious finding and conclusions contained in the supervisory letter is the one characterizing Stagner as "an utterly irresponsible builder" (hearings, p. 497; exhibit No. 3). Mr. Wyman simply did not have competent evidence available to him to support this finding when he made it and the evidence adduced at the hearings completely refutes this libelous characterization of Stagner. This finding that Stagner was "an utterly irresponsible builder" constitutes an example of the irresponsibility of Mr. Wyman and well illustrates his willingness to arbitrarily slander the character of persons who get in his way. It further illustrates the lack on Mr. Wyman's part of a suitable temperament to exercise the broad scope of authority he has arrogated to himself as Chief of Supervision.

15. Another defamatory and artful finding in the supervisory letter is one to the effect that "material facts were concealed from, and grossly misrepresented to, the Board's examiners by C. Roy Smith." The so-called material facts which this finding refers to concern the Stagner operations. Said finding is unjustified for the following reasons:

(*a*) As to the $400 transactions consummated during the years 1949–51, Mr. Smith put the Bank Board examiners on notice by his letter of March 31, 1950, to Federal Home Loan Bank Board Examiner Harbison (while the agreement concerning these transactions was still in effect) that he was helping Stagner with "private loans from myself" (hearings, p. 118, exhibit No. 21). This personal financing of Stagner by Mr. Smith was terminated prior to 1952 without the Bank Board bothering to investigate or telling Mr. Smith to stop making such loans.

Accordingly, the Bank Board officials by their nonaction were legally and morally estopped from resurrecting and using these closed transactions to support a finding in 1959 of censurable "self-dealing." Nor can any inadvertent misstatements or misunderstood statements Mr. Smith may have made years after these transactions were terminated concerning the exact amount of personal gains he received be tortured into being "gross" misrepresentations and concealment from examiners of "material facts." In the first place they were not facts that any law, rule, or regulation required Mr. Smith to furnish. Secondly, Examiner Chastain could not have been deceived because he did not concern himself with such matters prior to receiving Mr. Wyman's special "self-dealing" instructions in 1956 (hearings, p. 108).

Thirdly, Mr. Ammann conceded (hearings, p. 270) that it was not material whether the personal gains received were $50 or $400. Finally, when Mr. Chastain did get around to making inquiry into these transactions in 1957—5 years after they were terminated—Mr. Smith voluntarily turned over all his personal records and books relating to the transactions.

(*b*) As for Stagner, Inc., its organization and business activities were a matter of public record. Mr. Chastain admitted he knew Stagner, Inc., was selling lots to Stagner & Sons, Inc., but that he never inquired into its stockownership until 1956 (hearings, p. 108). When he did make inquiry, he admitted that C. Roy Smith told him "there would be no difficulty in getting Stagner, Inc., books" (hearings, p. 91).

Since Mr. Chastain's examination report concerning both the $400 transactions and the "personal gains" from Stagner, Inc., was unsubstantiated and obviously exaggerated, Mr. Wyman clearly did not have competent evidence available to him to support the finding that "material facts were concealed from, and grossly misrepresented to, the Board's examiners by C. Roy Smith." When Mr. Wyman proclaimed this defamatory finding to the directors of the association at Little Rock as one of his principal shockers and intimidators he went far beyond the bounds of propriety.

16. Another example of the capricious and intemperate findings and conclusions contained in the supervisory letter is the "legal" conclusion that the association's Hereford, Tex., "agency" was "being operated in violation of the rules and regulations." Even General Counsel Creighton of the Bank Board found it necessary to hold in the opinion he furnished the subcommittee dated May 25, 1962 (hearings, p. 621, exhibit No. 51), that the association had the right to believe that the Hereford operation "was legally unobjectionable."

17. The ultimatum technique which Mr. Wyman used at the Little Rock meeting to shock and intimidate the association directors into agreeing to comply with his unauthorized reorganization mandate without offering them an opportunity to answer his assorted findings was outrageous and demonstrated ineptitude by the Bank Board in supervising its employees and carrying out its duties.

18. The use of the forfeiture of the right to hold office technique in this case where there was admittedly no grounds for seizure can be characterized as nothing short of bureaucratic blackmail.

19. That supervisory action as drastic as that taken in this case was taken without consultation or clearance with the General Counsel's Office of the evidence of malfeasance, if any, the legal authority for the proposed action, the procedure to be followed, etc. not only is shocking but also demonstrated a complete and inexcusable failure by the Bank Board to establish even a minimum of sound procedures. The Bank Board and its staff, including its General Counsel, seemingly forget that as a regulatory agency of the U.S. Government that it cannot properly flex its administrative muscles unless it is authorized by law to do so. And that when the Bank Board does act, it must always do so in a manner which affords due process of law to the institutions and the persons it regulates.

20. The use of the informal and Star Chamber technique employed in this case in lieu of formal proceedings of record resulted in dictatorial powers being vested in and exercised by Mr. Wyman.

21. The compassion shown at the Little Rock meeting by Mr. Wyman for Attorney Otto Smith, one of the so-called self-dealers, as opposed to the censure and the treatment received by C. Roy Smith, Floyd Bresenham, and Jack M. Stagner demonstrates how capricious and unpredictable regulatory action can be when left to a dogmatic man's whims.

22. That General Counsel Creighton attempted to defend the Little Rock proceedings on the untenable grounds that he did (supra, pp. 42–44) plus the philosophy he expressed as to his role as chief legal officer of the Bank Board (hearings, pp. 354–388) calls into question his fitness for the office he holds.

23. The performance of Associate Director of Supervision Ammann—his unusual faculty for reading into documents things that are not there and his intellectual blindness in refusing to see clear language in documents that is plainly evident, and his imperviousness to any evidence running counter to his predilections raises the gravest of doubts that he is qualified by any reasonable or rational standard to continue in the important position which he now occupies. He demonstrated an attitude in his appearance before the committee which can lead only to the conclusion that he considers the role of the Congress as a policymaker in this area to be subordinate to his own.

24. The kindest characterization of the role of Supervisory Agent Oakes in this case is that it constituted in the interest of expediency a compromise of personal integrity.

## Committee Recommendations

The committee recommends:

1. The Federal Home Loan Bank Board should conduct its regulatory operations within the laws as written until they are amended. Illegal tactics such as those resorted to in the present case should not be employed to effect the unauthorized reorganization of a solvent association and the removal and the blacklisting of certain of its officers.

2. The present Bank Board should immediately put a stop to any Star Chamber and behind-the-back supervisory procedures, tactics, and devices which its staff may yet be employing.

3. No supervisory document charging a violation of a law, rule or regulation should be sent or delivered to an association until and unless it has been reviewed by the Office of the General Counsel of the Bank Board and a citation made to the specific law, rule, or regulation allegedly violated.

4. The Federal Home Loan Bank Board should define by rule and regulation such terms as "self-dealing," "violations of fiduciary duties," etc., as have been freely used and relied upon by its staff as the basis for supervising and regulating institutions under its jurisdiction. In the absence of definition by regulations promulgated by the Federal Home Loan Bank Board, the officers of an association should not be retroactively charged with "self-dealing," "violation of fiduciary duties," or failure to comply with other undefined and unprescribed "duties" until and unless the General Counsel of the Bank Board cites one or more decided cases of record to support the charge.

5. The Bank Board should, by regulation, establish to the fullest extent possible uniform criteria for determining what constitutes unsafe or unsound practices on the part of association management.

6. Except in an actual emergency no drastic supervisory action should be taken against the management of a solvent association on the ground of unsafe or unsound practices until and unless the management officers have been given due notice and a reasonable opportunity to take corrective action and/or the opportunity to defend themselves in a formal proceeding of record, meeting the full requirements of due process of law.

7. The Federal Home Loan Bank Board should repudiate and take appropriate action to expunge from its records:

(*a*) The supervisory letter of May 21, 1959, addressed to the board of directors, First Federal Savings & Loan Association of Clovis, Clovis, N. Mex.

(*b*) The supplemental report (including its confidential section) of the examination and audit of the First Federal Savings & Loan Association of Clovis, Clovis, N. Mex., made as of the close of business September 3, 1957, by Examiner H. H. Chastain.

(*c*) The Ammann-Nichols Digest, a 20-page document dated February 16, 1959, and signed by Associate Director Ammann

and Financial Analyst Nichols of the Division of Supervision, Federal Home Loan Bank Board, and

(*d*) The Wyman digest, a memorandum nine pages long "To: Federal Home Loan Bank Board; From: John M. Wyman," dated March 31, 1959.

8. The present Bank Board should reassess its present staff and its method of operation in the light of the findings and conclusions made herein and take appropriate administrative measures to effect the adjustments indicated.

9. The Bank Board is requested to report to the committee not later than December 31, 1962, regarding the action taken.

# APPENDIX

MAY 8, 1958.

Memorandum to: Norman Strunk.
From: Horace Russell.
Re: Federal Home Loan Bank Board Procedure.

I understand that you or others may discuss the above subject with the Board and I write this memorandum for consideration.

One procedure is to enforce law and regulations as written specifically and promptly as violations develop, and enact additional law and regulations from time to time to cover any wrongdoing not already prohibited and enforce the same. This is consistent with American constitutional law which prohibits ex post facto laws and requires definitions of crimes and statement of what is prohibited so that individuals may know what is a crime and what is prohibited before they act.

The other procedure is to have the statute law delegate broad general discretion to officials to require people to do right and stop them from doing wrong. This method is illegal in the United States but unfortunately in the supervision of financial institutions, it can be pursued by the supervisors and the individual has very inadequate and ineffective means of defense. I think we should persuade the Board to pursue the former course.

The large number of cases which have developed in the savings and loan business in recent years have set a pattern which appears to be followed. That pattern is not to stop wrongdoing when it is started or even when it is discovered as the statute says the Board "shall" do, and gives the Board plenty of power to do but on the other hand to accumulate numerous alleged acts of wrongdoing and suddenly to demand resignations of all directors and officers so that the Board can install a complete new management satisfactory to it, and the alternative is the immediate appointment of a supervisory representative in charge and seizure.

We should urge the Board to stop all wrongdoing promptly by acting specifically in each case and to seize solvent institutions only when wrongdoing cannot be corrected specifically. If more criminal statutes are needed, we should request the enactment of the same. If more civil requirements are needed to prevent wrongs, we should request the enactment of the same into the statute or by regulation. I think all of us want all wrongdoing in the savings and loan business stopped.

We are not called upon to decide whether the charges are true which have been made and which have resulted in the seizures and threatened seizures. We should urge the Board, however, that when it finds alleged wrongdoing it file a proceeding as it has done in the *First Federal of Chicago* case and give the parties a fair chance to try their

case. This has not been done in other cases where it should have been done. This procedure is particularly important in view of the traditional operation of savings and loan associations, banks and insurance companies. Some think that it is legal, moral, and all right for an official or the officers and directors of a savings and loan association to own an insurance agency and for it to write insurance on risks in which the association is interested in acceptable companies and in acceptable form and at standard rates, provided that neither the agency nor the association interferes with the right of the borrower to shop reasonably in the insurance market for his insurance coverage. Some are beginning to question this proposition and to allege it involves "self dealing." If it is to be used in a basket of charges to entrap management, there ought to be a ruling prohibiting it so that management would have a chance to conform to the ruling or to contest it, with or without a ruling. If this question is to be raised, it should be raised specifically and the association and its officers should have a right to try the issue as is provided by section 5(d)(1) of Home Owners Loan Act.

For a long time officers of banks, insurance companies, and savings and loan associations have been prohibited from making charges in connection with loans obtained from their employer, but it has been legal for such officers to be officers of other corporations which do business with their employer and, for instance, to engage in the real estate business and for the institution to finance outside third parties buying from such officers. Some now contend that this situation presents undue temptation and involves "self dealing" which is not defined, and such a charge, though not prohibited by law or regulation, is in the basket to be used to entrap management. Again, a ruling ought to be made against the practice if it is wrong. Whether or not a ruling is made if a charge is made that the acts are wrong, it ought to be made specifically under section 5(d)(1) so that the parties would have an opportunity to try the case. It is similar with each and every one of these alleged wrongdoings.

Some people on the Board staff seem to think that it is impracticable for them to stop wrongdoing when it is discovered but it is not. Wrongdoing ought to be stopped promptly when it is discovered. It is wrong for the Board to abuse the administrative process by threatening seizure of solvent institutions and by demanding wholesale resignations when the wrongs could be otherwise corrected. It is significant that with some 14,000 banks in operation in the country and many hundreds of insurance companies, we do not hear of such procedure being adopted. Banks were seized when they were insolvent but in these times when banks are not insolvent, we find the bankers proceeding as the Federal Reserve Board is specifically in the *Eccles Bank* case.

The present procedure which is following a regular pattern of building up a series of charges, one of which generally is a false statement which is in most cases one innocently made, and then demanding wholesale resignations with a threat of immediate seizure is wrong. It is a rank abuse of the administrative process and the power of the government. Unfortunately the average management under such circumstances, even if the charges are false, is defenseless as a practical matter.

If this question is squarely presented to the Board and its staff, it seems to me that they can be persuaded to change their course.

Finally, when a few months ago the Board requested extensive new statute law, unfortunately it requested complete discretionary power with language which would leave officers and directors no way to defend themselves against false or capricious charges. There is no objection to giving the Board plenty of power to carry all of its great responsibility provided individuals are given an adequate and effective means to defend themselves against false and capricious charges.

## MINORITY VIEWS

In dissenting from portions of the report, the undersigned do not wish to detract in any way from the work of the subcommittee which has done a creditable job in pointing up what appear to be deficiencies in the supervisory procedures and techniques followed by the Federal Home Loan Bank Board and its staff. The undersigned are not in sympathy with the informal methods of operation documented by the subcommittee and would join in administering any deserved rebuke.

However, while there is room for constructive criticism, the documentation of shortcomings is not complete enough or substantial enough to justify the vigor of the subcommittee's personal attacks on the Federal Home Loan Bank Board staff. Therefore, the undersigned wish to disassociate themselves from these excesses and the extravagant language of the report, particularly as expressed in the findings and conclusions.

It must be remembered that the Federal Home Loan Bank Board supervises some 4,200 savings and loan associations. When one considers the natural inclination of an industry to chafe under regulation, the complaints have been relatively few indeed. A more representative sampling of cases would doubtless reveal a substantial contribution to the industry by the Federal Home Loan Bank Board staff over the years.

Whatever mistakes, whatever errors in judgment, whatever overzealousness the staff may have been guilty of, there is no evidence that they were motivated by anything but concern for the best interests of the depositors and of the industry. When all the pluses and minuses are weighed we believe that it will be apparent that the indictment handed down here is too severe. To unmercifully flog those who have dedicated their lives to public service—the rewards of which are little enough at best—seems inappropriate for a subcommittee whose more proper role would seem to be to point up legislative and regulatory gaps needing closing.

We do not fancy the subcommittee in the role of a tribunal pronouncing stern judgments without giving the accused the opportunity to cross-examine the complainants to develop fully all matters in extenuation.

Neither do we fancy the subcommittee in the role of another level of supervision to second-guess the Federal Home Loan Bank Board in the administration of its program and to say whom it is to hire and fire. It is doubtful that any action among the thousands taken with necessary dispatch by an administrative or regulatory agency of the Federal Government cannot be found wanting in some respect when exhaustively analyzed with the penetrating hindsight to which this case has been subjected.

In 1960 the subcommittee conducted extensive hearings in the case of the Federal Home Loan Bank Board's seizure of the Long Beach Federal Savings & Loan Association and issued a report (H. Rept. No.

2083, 86th Cong., 2d sess.), pointing up deficiencies in supervisory practices.

Since the instant case deals with complaints prior to that report, its effectiveness is diminished if the Federal Home Loan Bank Board and its staff have corrected the procedures that were objected to. This has not as yet been determined by the subcommittee and it could well be that the reprimands administered in 1960 have resulted in reformation.

R. WALTER RIEHLMAN.
GEORGE MEADER.
CLARENCE J. BROWN.
FLORENCE P. DWYER.
ROBERT P. GRIFFIN.
GEORGE M. WALLHAUSER.
ODIN LANGEN.
JOHN B. ANDERSON.
F. BRADFORD MORSE.

## ADDITIONAL VIEWS OF HON. CHET HOLIFIELD AND HON. NEAL SMITH

The committee has had many complaints and has not yet had time to follow all leads, but abuses such as detailed in this case and others documented by the committee, following the same pattern, should be halted as soon as possible. We do not feel that the industry should be further exposed to the risks resulting from such procedures while we continue our study.

Although we do not accuse anyone of bad motives, an association that is ruined or an individual that is hurt is just as badly off where the perpetrator had a good motive as would be the case where the perpetrator had a bad motive. Whether corrective action should be taken should not be determined by whether there were good or bad motives.

Testimony of members of the supervisory staff and the general counsel of the Federal Home Loan Bank Board was replete with statements which indicate that they consider their past procedures justified. Associations and their directors and officers have suffered from these bureaucratic procedures in the past and action has been taken and/or threatened under the emergency clause, section 5(d)(2) of the statute, against solvent institutions which were clearly entitled to the supervisory action and protection set forth under section 5(d)(1) of the statute (12 U.S.C. 1464(d)(1)). In our opinion the key members of the Bank Board's staff have no intention of changing past procedures unless and until there are clear rules and regulations established to prohibit such procedures.



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